DOCUMENT RESUME

ED 378 706 EC 303 602

AUTHOR	Love, Laura
TITLE	Applying the Fair Labor Standards Act When Placing Students into Community-Based Vocational Education. A Trainer's Manual.
INSTITUTION	Western Regional Resource Center, Eugene, OR.
SPONS AGENCY	Office of Special Education and Rehabilitative Services (ED), Washington, DC.
PUB DATE	Jun 94
CONTRACT	H028-A30003
NOTE	503p.
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF02/PC21 Plus Postage.
DESCRIPTORS	*Community Based Instruction (Disabilities); *Compliance (Legal); *Disabilities; Employer Employee Relationship; Employment Practices; Federal Legislation; Guidelines; Job Placement; *Labor Legislation; *Labor Standards; Secondary Education; *Vocational Education; Wages
IDENTIFIERS	*Fair Labor Standards Act

ABSTRACT

This manual, intended as a training module for professionals involved in providing community-based vocational education, provides a thorough review of the Fair Labor Standards Act (FLSA) as it applies to vocational education, training, and employment of students. Individual sections address the following topics: (1) relationship of the FLSA to other federal initiatives including the Individuals with Disabilities Education Act, the Rehabilitation Act of 1973, and the Americans with Disabilities Act; (2) other applicable federal and state wage/hour laws; (3) specific requirements of the FLSA including guidelines for community-based educational programs for students with disabilities; and (4) conditions under which subminimum wages can be paid under the FLSA. Appendices comprise the bulk of the document and include: overhead transparencies; guidelines for implementing community-based educational programs for students with disabilities; compliance checklists; examples of Department of Labor application forms; a handy reference guide to the FLSA; a copy of the Fair Labor Standards Act of 1938 as Amended; regulations concerning hours worked, records to be kept by employers, and child labor requirements in agricultural and nonagricultural occupations; requirements concerning certificates of age; and requirements for the employment of workers with disabilities under special certificates. (DB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 378 706

Applying the
FAIR LABOR STANDARDS ACT
When Placing Students into Community-Based Vocational Education

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality
- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

A Trainer's Manual

LAURA LOVE
Arizona Department of Education

June, 1994

EC 303602

BEST COPY AVAILABLE

Applying the
FAIR LABOR STANDARDS ACT
When Placing Students into Community-Based Vocational Education

A Trainer's Manual

LAURA LOVE
Education Program Specialist
Special Education Section
Arizona Department of Education

This document was developed under contract with the Western Regional Resource Center, Eugene, Oregon, pursuant to Grant Number H028-A30003 with the U.S. Department of Education, Office of Special Education and Rehabilitative Services. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Education, nor does mention of tradenames, commercial products, or organizations imply endorsement by the U.S. Government. [TAA#105TRN].

The author wishes to gratefully acknowledge Diane Reese of the U.S. Department of Labor, Employment Standards Administration, Wage-Hour Division, Special Employment Programs, Region 9 (Tucson, AZ) for her technical review and editing (AND SUPPORT) of this document.

Contents

OH-2

Page

- Introduction and Overview of Training Manual 1
- Relationship of FLSA to Federal Initiatives for Community-based Vocational Education 2
- Applicable Federal & State Wage Laws 5
- Fair Labor Standards Act (FLSA) 6
  - Coverage 6
  - Employment Relationship 7
    - Unpaid Work Experience Under the FLSA 7
      - Trainee 7
      - Volunteer 12
      - In-School Placement 13
  - Wage Payments/Minimum Wage 14
  - Compensable Time & Non-Compensable Time 15
  - Overtime Compensation 15
  - Equal Pay Provision 16
  - Child Labor 16
    - Nonfarm Occupations 16
    - Farm Occupations 17
    - Work Experience and Career Exploration Programs 18
  - Recordkeeping 19
  - Enforcement Procedures and Remedies 20
  - Investigations 20
  - Recovery of Back Wages 21
- Payment of Subminimum Wages Under the FLSA 22
  - Employment of Full-time Students (Part 519) 22
  - Employment of Student-Learners (Part 520) 23
  - Employment of Apprentices (Part 521) 23
  - Employment of Learners (Part 522) 24
  - Employment of Messengers (Part 523) 24
  - Employment of Workers with Disabilities under Special Certificates (Part 525) 25
  - Employment of Student-Workers (Part 527) 25

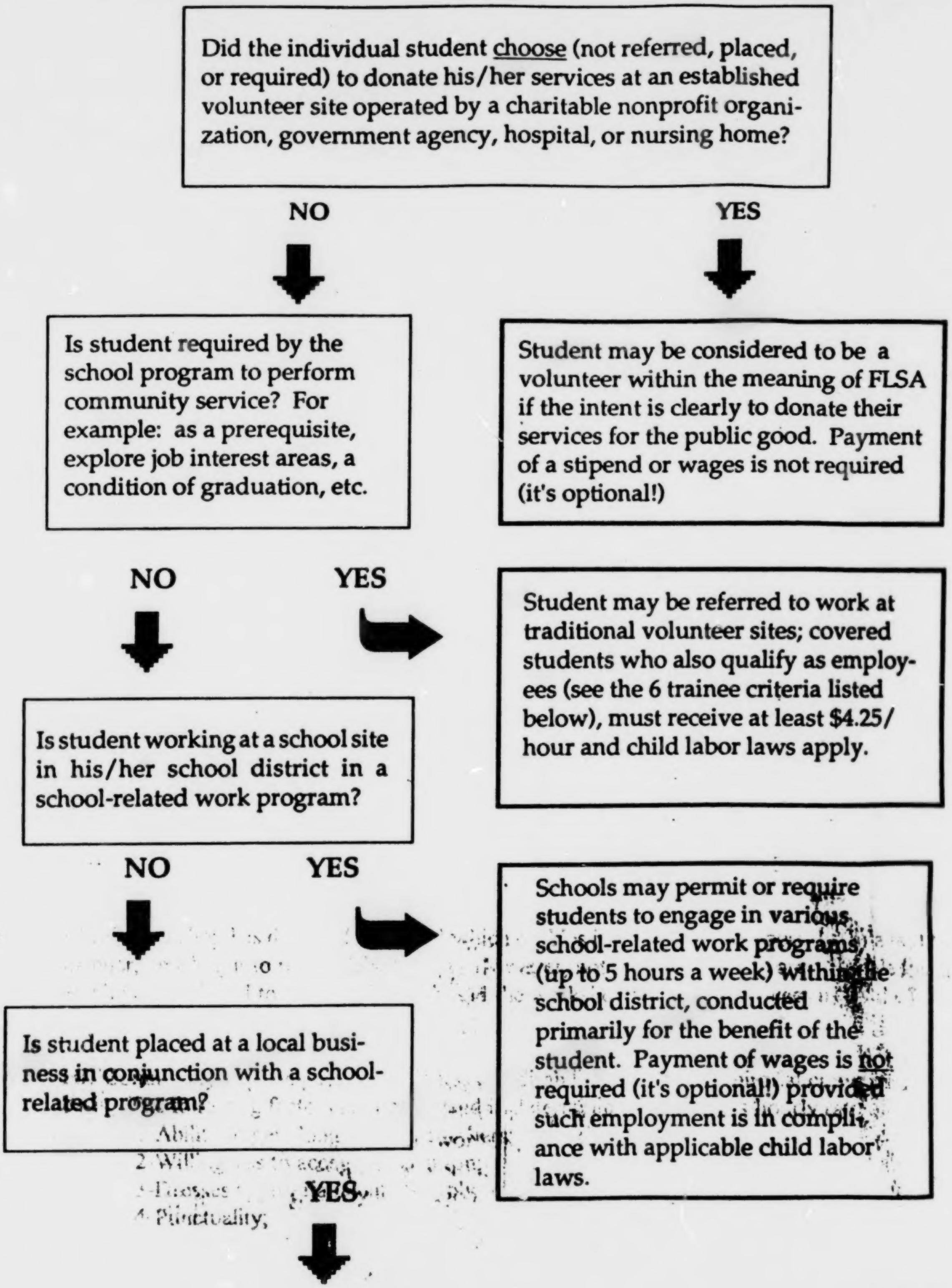
OH-3

OH-4

Appendices

- Appendix A: Overhead Transparencies
- Appendix B: Guidelines for Implementing Community-based Educational Programs for Students with Disabilities
- Appendix C: Meeting the Needs of Youth with Disabilities
- Appendix D: Compliance Checklists
- Appendix E: Examples of DOL Application Forms
- Appendix F: Determining Piece Rates and Hourly Wage Rates
- Appendix G: Handy Reference Guide to the Fair Labor Standards Act
- Appendix H: Fair Labor Standards Act of 1938, as Amended
- Appendix I: Interpretative Bulletin, Part 785: Hours Worked Under the FLSA
- Appendix J: Fair Labor Standards Act; Records to be Kept by Employers; Final Rule
- Appendix K: Employment Relationship Under the Fair Labor Standards Act
- Appendix L: Child Labor Requirements in Nonagricultural Occupations Under the FLSA
- Appendix M: Child Labor Requirements in Agriculture Under the Fair Labor Standards Act
- Appendix N: WECEP; Certificates of Age
- Appendix O: Employment at Subminimum Wages - Parts 519, 520, 521, 522, 523, 527
- Appendix P: Employment of Workers with Disabilities Under Special Certificates - Part 525

The Fair Labor Standards Act (FLSA) & School- Related Work Programs: Are Students Required to be Paid? Do FLSA Child Labor Laws Apply?



Did the individual student choose (not referred, placed, or required) to donate his/her services at an established volunteer site operated by a charitable nonprofit organization, government agency, hospital, or nursing home?

Student may be considered to be a volunteer within the meaning of FLSA if the intent is clearly to donate their services for the public good. Payment of a stipend or wages is not required (it's optional!)

Is student required by the school program to perform community service? For example: as a prerequisite, explore job interest areas, a condition of graduation, etc.

Student may be referred to work at traditional volunteer sites; covered students who also qualify as employees (see the 6 trainee criteria listed below), must receive at least $4.25/hour and child labor laws apply.

Is student working at a school site in his/her school district in a school-related work program?

Schools may permit or require students to engage in various school-related work programs, (up to 5 hours a week) within the school district, conducted primarily for the benefit of the student. Payment of wages is not required (it's optional!) provided such employment is in compliance with applicable child labor laws.

Is student placed at a local business in conjunction with a school-related program?

page 1 of 2

YES

With respect to the individual student's placement at a community business establishiment, do all six of the following criteria apply?

______YES ______NO 1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school. (A curriculum is followed, the students are under continued and direct supervision by either representatives of the school or by employees of the business).

______YES ______NO 2. The training is for the benefit of the trainees or students, such placements are not made to meet the labor needs of the business.

______YES ______NO 3. The trainees or students do not displace regular employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.

______YES ______NO 4. The employer that provides the training derives no advantage from the activities of the trainees or students, and on occasion his or her operations may actually be impeded.

______YES ______NO 5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period.

______YES ______NO 6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

NO to any of the 6 criteria

The Department of Labor has always considered work performed as part of a community training/evaluation period to be compensable. This is made clear in the FLSA definition of *employ*—"to suffer or permit to work," which states that an employment relationship "does not depend upon the level of performance or whether the work is of some educational and/or therapeutic benefit." This position conforms to various court decisions regarding employment relationship under the FLSA. Unless the school or business holds a subminimum wage certificate issued by Wage-Hour, covered students must receive $4.25/hour and child labor laws apply. Either the business or the school system may compensate the student worker; both parties are jointly responsible for labor law compliance. Individuals eligible for employment under sub-minimum wage certificate include: students with disabilities participating in a school-related work program, student-learners in a vocational education program, & full-time students in retail or service establishments, agriculture, or institutions of higher education. For detailed information about Wage-Hour certification, contact Diane Reese at (602) 670-4822, in AZ, or Howard Ostmann at (202) 219-8727 in Washington, DC.

YES to all 6

The individual student is NOT an employee within the meaning of the FLSA. Stipends or wages are not required and child labor laws do not apply. Again, payment is optional.

FEDERAL LABOR LAWS FOR YOUNG WORKERS

Fourteen is the minimum age for most nonfarm work

14 and 15 year olds:

- can work up to 3 hours on a school day, Monday thru Friday and 18 hours during a school week.
- can work up to 8 hours a day on a nonschool day, or 40 hours in a nonschool week.
- cannot work during school hours.
- cannot work before 7:00 AM or after 7:00 PM, except from June 1 thru Labor Day when evening hours are extended to 9:00 PM.
- cannot work in any manufacturing, processing, mining, construction, warehouse operations, and many restrictions apply in cooking.
- cannot work in any of the 17 Hazardous Occupations listed below, for "16 and 17 year olds".

16 and 17 year olds:

- can work in any occupation except those declared hazardous by the Secretary of Labor. The 17 Hazardous Occupations for nonfarm work deal with the following:

1. Manufacturing or storing explosives
2. Driving a motor vehicle and being an outside helper
3. Coal mining
4. Logging and sawmilling
5. Power-driven wood working machines
6. Exposure to radioactive substances and to ionizing radiations
7. Power-driven hoisting apparatus
8. Power-driven metal forming, punching and shearing machines
9. Mining other than coal mining
10. Meat packing or processing (including power-driven meat slicing machines)
11. Power-driven bakery machines
12. Power-driven paper products machines
13. Manufacturing brick, tile, and related products
14. Power-driven circular saws, band saws, and guillotine shears
15. Wrecking, demolition, and ship-breaking operations
16. Roofing operations
17. Excavating operations

18 year olds:

- can work in any job for unlimited hours

Employers who violate the FLSA child labor law provisions are subject to a civil money penalty of up to $10,000 for each child labor violation that causes the death or serious injury of a minor.

State and Federal child labor laws sometimes differ. When both apply, the law with the more stringent standard must be observed.

FOR MORE INFORMATION, CONTACT:

The Wage and Hour office nearest you, they are listed in most phone books under: U.S. Government, Department of Labor, Employment Standards Administration, Wage and Hour Division

This is one of a series of fact sheets highlighting U.S. Department of Labor programs and is intended to serve as a general description only and does not carry the forces of legal opinion.

Introduction and Overview of Training Manual

INTRODUCTION & OVERVIEW OF MANUAL

OH-5

As an increasing number of students participate in vocational education, educators and administrators need to be aware of the impact labor laws have on vocational education, vocational training and employment of students. The Fair Labor Standards Act (FLSA), and other state and federal labor laws, prescribe regulations governing training and employment. The U.S. Department of Labor (DOL), which administers and enforces the FLSA, is concerned with all work situations

- where an "employment relationship" exists,
- particularly off-campus community work sites or on-campus sites where an outside contractor is involved (e.g., a private catering company that operates a food service concession on campus), and
- where federal and state wage laws apply.

"Applying the Fair Labor Standards Act When Placing Students into Community-based Vocational Education" provides a thorough overview of the Fair Labor Standards Act as it applies to vocational education, training and employment of students. This manual is designed to be used as a training module to train professionals on the FLSA. Each section in this manual provides pertinent information about the FLSA as it applies to training and employment of students. Overhead transparencies are included in Appendix A to summarize important concepts within each section. Reference materials pertaining to the FLSA are contained in Appendix G through Appendix P.

Decisions on when and where to place a student into community-based vocational education must be made on an individual basis. The needs, preferences, and capabilities of the individual student must be considered when determining placement. Employment preparation should be a systematic process designed to lead the student from their present level of employment awareness and skill to their eventual employment outcome as an adult. For each student, this process should allow for participation in a continuum of vocational opportunities including assessment, exploration, training, education, and eventual employment.

When developing a community-based vocational education program, or when questions arise in placing a student into a community-based education, training, or employment opportunity, contact your state's departments of education and labor for assistance with compliance with the Fair Labor Standards Act and other state and federal labor laws.

Relationship of FLSA to Federal Initiatives for Community-based Vocational Education

Relationship of the FLSA to Federal Initiatives for Community-based Vocational Education

The relationship of the Fair Labor Standards Act (FLSA) to the array of federal initiatives supporting vocational education and employment is immense. Educators and other professionals are required under several federal laws to provide vocational education and employment skill development to youth and adults. Embedded in each of these federal laws is a focus on employment preparation of a targeted audience, while concurrently protecting the rights of individuals with disabilities and/or disadvantages to have access to opportunities afforded to the general population. The FLSA governs the types of training and employment opportunities for youth, particularly with regard to hours worked, allowable occupations, and wage payments. Following is a brief description of each of these federal laws which emphasize employment preparation through participation in vocational education, vocational training and employment skill development.

FAIR LABOR STANDARDS ACT (FLSA)

Congress enacted the FLSA in 1938, after finding "the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." The Fair Labor Standards Act of 1938, as amended, sets minimum wage, overtime pay, equal pay, recordkeeping, and child labor standards for employees who are covered by the Act and are not exempt from specific provisions. The administration and enforcement of the Fair labor Standards Act (FLSA) and related statutes is the responsibility of the U.S. Department of Labor (DOL). Within DOL, the Wage and Hour Division of the Employment Standards Administration has authority for the FLSA. The Wage and Hour Division issues rules, regulations, and interpretations under the FLSA and conducts inspections and investigations to determine compliance with the Act.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

The Individuals with Disabilities Education Act (IDEA), formerly known as the Education of the Handicapped Act (EHA), was signed into law in October 1990. The most significant amendments of the IDEA are the requirements for transition services for students by age 16. The IDEA defines transition services as "a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation."

CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT

The Carl D. Perkins Vocational and Applied Technology Education Act emphasizes program improvement in vocational education including, support services to special populations. Programs funded with Carl Perkins monies must provide equal access for students with disabilities and other special populations in the areas of recruitment, enrollment, and placement. Information indicating the opportunities available in vocational education, placement services, and vocational and employment services must be provided, by the ninth grade, to students and parents by school districts. Districts provide trained counselors, in conjunction with other appropriate staff, for students with disabilities to assist in career planning and vocational programming by ninth grade, and in planning the transition from school to work. Districts must also assess their programs and their students' completion of vocational programs in integrated settings, and must ensure that supplementary services are made available to all students with disabilities including modifications in curriculum, equipment, classrooms, support personnel, and instructional aides and devices.

JOBS TRAINING PARTNERSHIP ACT

The Job Training Partnership Act (JTPA) was established by 1982, replacing the Comprehensive Employment and Training Act (CETA). The goal of the JTPA is to train and place individuals who are economically disadvantaged in the labor market. This is a joint venture between the public and private sector, which is administered through the Governor's office in each state. JTPA programs offer an array of employment-related services including job recruiting; counseling in basic work skills; on-the-job training; programs to develop work habits; and assistance with the transition from education to work.

The Job Training Reform Amendments were signed into law in September 1992. The amendments provide youth and adults with disabilities expanded opportunities to participate in a variety of training and employment programs. The JTPA provides monies to local school consortia projects on a competitive basis which target at-risk students, students with disabilities, low income and minority students. Students served in a JTPA program have a written employment/education development plan determined by the local Private Industry Council's work competency plans. The new amendments promote the importance and availability of transition services, stating "it is the purpose of the programs assisted under this part to...assist youth in addressing problems that impair (their) ability to make successful transition from school to work, apprenticeship, the military, or postsecondary education and training."

SCHOOL-TO-WORK OPPORTUNITIES ACT

The newest federal employment initiative was signed into law in 1994. The School-To-Work Opportunities Act promotes a system containing three core elements known as School-Based Learning, Work-Based Learning, and Connecting Activities. School-Based Learning is classroom instruction based on high academic and occupational skill standards. Work-Based Learning is work experience, structured training and mentoring at job sites. Connecting Activities develop courses that integrate classroom and on-the-job instruction, match students with participating employers, train job-site mentors and build and maintain bridges between school and work.

REHABILITATION ACT

The purposes of the Rehabilitation Act of 1973 are to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society through comprehensive and coordinated state-of-the-art programs of vocational rehabilitation; independent living centers and services; research; training; demonstration projects; and the guarantee of equal opportunity. The Rehabilitation Act of 1973 was reauthorized starting in 1992. The amendments adopted the IDEA's definition of transition services and required state rehabilitation agencies to establish policies and procedures to facilitate the transition of youth with disabilities from school to the rehabilitation service system.

The Vocational Rehabilitation division established in each state by the Rehabilitation Act provides vocational rehabilitation services to interested and eligible individuals who (1) have the presence of a physical or mental impairment which constitutes or results in a substantial impediment to employment; and (2) the individual requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

AMERICANS WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act of 1990 ensures that people with disabilities, including students, have equal access to employment, transportation, public accommodations, and telecommunications. To provide access, reasonable accommodations must be made in employment; new public transit vehicles must be accessible or paratransit service provided; auxiliary aids and services must be provided by businesses and public services to enable a person with a disability to use and enjoy the goods and services available to the public; and telephone companies must offer telecommunications devices for the deaf or similar devices.

☞ *Each of these federal laws emphasize the importance of providing youth and adults with skills leading to employment. The Fair Labor Standards Act is the overarching federal legislation which regulates the training and employment opportunities supported by these federal laws by establishing minimum wage, overtime pay, recordkeeping requirements, and child labor.* ☜

Applicable Federal & State Wage Laws

Federal & State
Wage Laws

Applicable Federal & State Wage/Hour Laws

OH-7

Section 3(s)(1) of the FLSA stipulates that all schools are covered by the FLSA provisions regardless of whether or not such school is public or private or operated for profit or not for profit. The Wage and Hour Division (Wage-Hour) administers and enforces the FLSA with respect to private employment, including school employment. Covered nonexempt workers, including students, are entitled to a minimum wage of not less than $4.25 an hour. Students and/or their parents may not waive the right to wages.

State labor regulations apply as well. The more stringent of labor requirements is the one which must be followed. More detailed information on state labor law is available from local offices of the Department of Labor, which are listed in most telephone directories under State government.

In addition to the FLSA, Wage-Hour enforces and administers a number of other labor laws. Among these are:

The Davis-Bacon and Related Acts
Requires payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction.

The Walsh-Healey Public Contracts Act
Requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal Government.

The Service Contract Act
Requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal Government.

The Contract Work Hours and Safety Standards Act
Sets overtime standards for service and construction contracts.

The Immigration and Nationality Act
Wage-Hour is authorized to review the Immigration and Naturalization Service forms (I-9) required under the Act. Employers must verify the employment eligibility of all individuals hired after 11/6/86, and must keep I-9s on file for at least 3 years and for one year after employee is terminated.

The Wage Garnishment Law
Limits the amount of an individual's income that may legally be garnished and prohibits the firing of an employee whose pay is garnished for payment of a single debt.

The Employee Polygraph and Protection Act
Prohibits most private employers from using any type of lie detector test either for pre-employment screening of job applicants of for testing current employees during the course of employment.

The Family and Medical Leave Act (FMLA)
Enacted in February 1993, this Act entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons.

Fair Labor Standards Act (FLSA)

- Coverage
- Employment Relationship
    - Unpaid Work Experience Under the FLSA
        - Trainee
        - Volunteer
        - In-School Placement
- Wage Payments/Minimum Wage
- Compensable Time & Non-Compensable Time
- Overtime Compensation
- Equal Pay Provision
- Child Labor
    - Nonfarm Occupations
    - Farm Occupations
    - Work Experience and Career Exploration Programs
- Recordkeeping Enforcement Procedures and Remedies
- Investigations
- Recovery of Back Wages

The Fair Labor Standards Act

OH-8

The Fair Labor Standards Act establishes a general minimum hourly wage rate for those employees who are within its coverage and not exempt from its requirements. It also provides for equal pay regardless of sex and the establishment of minimum wage rates lower than the federal standards for certain classes of employment. Except for the child labor restrictions, the FLSA does not impose any general limitation on the number of hours that may be worked by employees covered under the Act. Instead, the Act seeks to limit the number of hours worked by requiring additional pay (overtime pay) for hour worked in excess of the established 40-hour maximum.

COVERAGE

Employers

Initially, the Fair Labor Standards Act applied only to private employers directly engaged in commerce. Government employees were added to FLSA coverage by amendments to the Act in 1966 and 1974.

OH-9

Employers (enterprises) covered by the FLSA include

a. an enterprise who gross volume of sales/business per year is not less than $500,000;

b. a residential care facility or hospital which cares for physically, mentally ill, disabled or elderly individuals;

c. a school for children who are mentally disabled, physically disabled or gifted;

d. a preschool, elementary or secondary school;

e. an institution of higher education;

f. a public agency (e.g., governmental agency - federal, state, local, county, city, tribal, public schools); and

g. joint employment [Students may be employed jointly by two or more employers (i.e., schools who refer, place, and train students in a business which receives a benefit). In this event all joint employers are responsible both individually and jointly for compliance with provisions of the FLSA.].

Employees

The basic requirements of the FLSA apply to employees engaged in interstate commerce or in the production of goods for interstate commerce, and also to employees in certain enterprises which are so engaged. Not all employees are affected by the FLSA. Certain employees are not covered by the Act, and are referred to as non-covered employees. Examples of non-covered employees include elected officials and their personal staff, political appointees, and legal advisors; bonafide volunteers; independent contractors; and prison laborers. Other employees, while covered by the FLSA, are exempted by certain provisions of the Act, and are referred to as exempt employees. Examples of exempt employees include executive, administrative, professional employees, certain seasonal recreational employees, and others.

EMPLOYMENT RELATIONSHIP

OH-10

For the Fair Labor Standards Act to apply to a person engaged in work which is covered by the Act, an employer-employee relationship must exist. Employment relationship requires an "employer" and an "employee" and the act or condition of employment. "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency. "Employee" means any individual employed by an employer. "Employ" means to suffer or permit to work.

The Supreme Court has held that there is "no definition that solves all problems as to the limitations of the employer-employee relationship" under the Act. The Supreme Court has also held that determination of the relation cannot be based on "isolated factors" or upon a single characteristic or "technical concepts," but depends "upon the circumstances of the whole activity" including the underlying "economic reality." Generally, an employee, as distinguished from an independent contractor engaged in a business of his own, is one who "follows the usual path of an employee" and is dependent on the business which he serves. Factors such as the place where the work is performed, the absence of a formal employment agreement, and whether the independent contractor is licensed by the State or local government are immaterial in determining the existence of an employment relationship. Whether the worker is paid piece-rate, by tips, by percentage, by commissions or by any other method is also immaterial, as is the time or mode of compensation.

Following are examples of unpaid work experience allowable under the Fair Labor Standards Act. In these examples an employment relationship is not implied, and therefore compensation not required under the FLSA.

Unpaid Work Experience Under the FLSA

OH-11

Public schools are regulated by the U.S. Department of Labor since a court ruling in 1985. A student is entitled to be paid for *work* at a minimum wage of $4.25 per hour. State labor regulations may apply as well; the higher standard is the one which applies. There has been considerable controversy regarding unpaid training, volunteers, and in-school placements. The following can be used as sources of reference.

There are three circumstances by which a student does not have to be paid because an employment relationship does not exist. These are (1) "trainee," (2) "volunteer," and (3) "in-school placements." All but "in-school placements" have rather stringent requirements which must be met so that the student does not have to be paid. Students and/or their parents may not waive their right to wages.

TRAINEE

OH-12

Six Trainee Criteria Determining a Non-Employment Relationship

To determine whether a student is entitled to wages as opposed to being an unpaid trainee, as in a work exploration program, there are six criteria used which determine the existence of an "employment relationship." **If all six of the following criteria apply, the trainees or students** (including individuals participating in school-to-work programs, internships, transition, vocational education, work experience, etc) are **NOT be considered to be employees within the meaning of the Fair Labor Standards Act (FLSA):**

① The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school *(a curriculum is followed, the students are under continued and direct supervision by either representatives of the school or by employees of the business)*;

OH-13

② The training is for the benefit of the trainees or students, and such placements are not made to meet the labor needs of the business;

③ The trainees or students do not displace regular employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.

OH-14

④ The employer that provides the training derives no advantage from the activities of the trainees or students, and on occasion his or her operations may actually be impeded;

⑤ The trainees or students are not necessarily entitled to a job at the conclusion of the training period *(Once a student has become an employee, the student cannot be considered a trainee at the particular community-based placement unless in a clearly distinguishable occupation)*; and

⑥ The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

The Department of Labor has always considered work performed as part of an evaluation period or training program to be compensable. This is made clear in the FLSA definition of "employ" - "to suffer or permit to work" - which states that an employment relationship "does not depend upon the level of performance or whether the work is of some therapeutic benefit." This position conforms to various court decisions regarding the employment relationship under the FLSA.

It is important to understand that an employment relationship will exist unless **all of the above six criteria** described in this guidance are met. Should an employment relationship be determined to exist, participating businesses (as well as the school) may be held responsible for full compliance with the FLSA, including the minimum wage and child labor provisions. Also, Wage-Hour may supervise payment of back wages and/or civil money penalties.

Businesses and school systems may at any time consider participants to be employees and may structure the program so that the participants are compensated in accordance with the requirements of the FLSA. Whenever an employment relationship is established, the school or employer may make use of the federal subminimum wage provisions (such as the full-time student certificate or the special education/school work experience program certificate) provided pursuant to Section 14(c) of the Act.

OH-15

ILLUSTRATION

1. In a hospital, a student shadowing a nurse, following and observing, but NOT helping.
2. In a supermarket, a student does simulated work such as practicing ringing-up baskets of groceries (collected by other students or the teacher), making change, learning assorted transactions and returning groceries to the shelves. Nothing was sold to actual customers.
3. A student entering worthless data on a company computer which is not used to conduct business.

DOCUMENTATION

Document the following items in a written training agreement signed by all parties including the student, parent/guardian, school district representative, and employer:

☐ The training is similar to that which would be given in a vocational school, even though it includes actual operation of the facilities of the employer. ✓ A curriculum is followed. ✓ The students are under continued and direct supervision by either representatives of the school or by employees of the business.

☐ The training is for the benefit of the student. ✓ The placement is not made to meet the labor needs of the employer.

☐ The students do not displace regular employees. ✓ Vacant positions have not been filled. ✓ Employees have not been relieved of any assigned duties. ✓ The student is not performing services that, although not ordinarily performed by employees, are clearly of benefit to the business.

☐ The employer that provides the training derives no advantage from the activities of the students. ✓ On occasion the employer's operation may actually be impeded.

☐ The students are not necessarily entitled to a job at the conclusion of the training period.

☐ The employer and the student understands that the student is not entitled to wages for the time spent in training.

In case you are wondering if you might be entitled to payment of back wages . . .

The FLSA exempts from salary or fee requirements physicians, lawyers, and teachers who are *"involved in an internship or resident program pursuant to the practice of his profession, or an employee employed and engaged as a teacher in the activity of imparting knowledge."* §541.314

. . . the answer is "no, you are not!"

Guidelines for Community-based Educational Programs for Students with Disabilities

OH-16

In September 1992, the federal labor and education departments issued guidelines that specify what would be permissible for students with disabilities in work experience programs who are functioning in some "trainee" capacity at actual work sites. The *Guidelines for Implementing Community-based Educational Programs for Students with Disabilities* apply to students who are unable to work at competitive rates and who need intensive on-going support on the job. The *"Guidelines"* allow students with physical and/or mental disabilities in school-based employment preparation programs to participate in vocational exploration, assessment and training in community-based work sites for no pay, provided their placements are tailored to the students' educational needs.

The U.S. Department of Labor will not assert an employment relationship for the purposes of the FLSA where ALL of the following criteria are met.

❶ Participants will be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting.

❷ Participation will be for vocational exploration, assessment, or training in a community-based placement work site under the general supervision of public school personnel.

OH-17

❸ Community-based placements will be clearly defined components of individual education programs developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative vocational education components will be included in the students' Individualized Education Program (IEP).

❹ Information contained in a student's IEP will not have to be made available; however, documentation as to the student's enrollment in the community-based placement program will be made available to the Departments of Labor and Education. The student and the parent or guardian of each student must be fully informed of the IEP and the community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the student-participant to wages.

OH-18

❺ The activities of the students at the community-based placement site do not result in an immediate advantage to the business. The Department of Labor will look at several factors.

a) There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.

b) The students are under continued and direct supervision by either representatives of the school or by employees of the business.

c) Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.

OH-19

d) The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.

❻ While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:

Vocational exploration	5 hours per job experienced
Vocational assessment	90 hours per job experienced
Vocational training	120 hours per job experienced

❼ Students are not entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.

OH-20

It is important to understand that imbedded in these guidelines are the six criteria which establish a non-employment relationship. In other words, all of the six "trainee" criteria must satisfied, in addition to the other criteria of these "Guidelines," in order for this circumstance to apply.

A recent publication *"Meeting the Needs of Youth with Disabilities: Handbook for Implementing Community-based Vocational Education Programs According to the Fair Labor Standards Act"* describes the four-stage approach to community-based vocational education, including the definitions of the terms "vocational exploration," "vocational assessment," "vocational training," and "cooperative vocational education." A copy of this handbook is contained in Appendix C.

Vocational Exploration

"The ***vocational exploration*** component exposes students briefly to a variety of work settings to help them make decisions about future career directions or occupations. The exploration process involves investigating interests, values, beliefs, strengths and weaknesses in relation to the demands and other characteristics of work environments. Through vocational exploration, students gain information by watching work being performed, talking with employees, and actually truing out work under direct supervision of school personnel. Exploration enables students to make choices regarding career or occupational areas they wish to pursue. The student, parents, exploration site employees, and school personnel use this information to develop the student's IEPs for the remainder of the student's special education experience."

Vocational Assessment

"The ***vocational assessment*** component helps determine individual training objectives for a student with a disability. In this CBVE component, the student undertakes work assignments in various business settings under the direct supervision of school personnel and employees. Assessment data are systematically collected concerning the student's interests, aptitudes, special needs, learning styles, work habits and behavior, personal and social skills, values and attitudes toward work, and work tolerance. The student rotates among various work settings corresponding to the student's range of employment preferences as situational assessments are completed by school personnel and assessment site employees. As a result, students select work settings in which they can best pursue career or occupational areas matching their interests and aptitudes. Future training objectives are matched with these selections. These training objectives become a part of the student's subsequent IEP."

Vocational Training

"The ***vocational training*** component of CBVE places the student in various employment settings for work experiences. The student, parents, and school personnel develop a detailed, written training plan, which includes the competencies to be acquired, method(s) of instruction, and procedures for evaluating the training experience. Training is closely supervised by a representative of the school or a designated employee/supervisor. The purpose of this component is to enable students to develop the competencies and behavior needed to secure paid employment. As the student reaches the training objectives in a particular employment setting, the student moves to other employment environments where additional or related learning, or reinforcement of current competencies and behavior can occur."

Cooperative Vocational Education

"***Cooperative vocational education*** consists of an arrangement between the school and an employer in which each contributes to the student's education and employability in designated ways. The student is paid for work performed in the employment setting. The student may receive payment from the employer, from the school's cooperative vocational program, from another employment program operating in the community such as those supported by the Job Training Partnership Act, or a combination of these. The student is paid the same wage as nondisabled employees performing the same work. In some instances, arrangements are made by the school and employer through the Department of Labor, Wage and Hour Division to pay a lower wage based on comparable performance....The school and employer reach a written agreement before the student enters the cooperative vocational education component. This agreement includes a clear stipulation of the student's wages and benefits. This agreement may also include follow-along services to ensure the student adjusts to the work assignments and improves performance and productivity over time. Students may engage in more than one cooperative vocational education placement as part of their special education experience during school."

DOCUMENTATION

To met the requirements of these guidelines, three types of documentation must be employed:

- ☐ IEP reflecting needed transition services in the area of vocational instruction and training goals and objectives relevant to the community-based vocational experience.
- ☐ Written training agreement - outlining the Dept. of Labor/Dept. of Education requirements (including the "six training criteria") and signed by all participants including student, parent/guardian, school district representative, and employer.
- ☐ Ongoing Case Notes (i.e. attendance records, progress reports, task analysis data, etc.).

For additional information on these guidelines, refer to Appendix B and C.

VOLUNTEER

OH-21

Individuals may serve as unpaid volunteer for public service, religious or humanitarian objectives. For example, parents and/or students may choose to assist with school fund raisers, deliver meals to the homebound, visit patients in nursing homes, or solicit contributions. ***Commercial businesses may not ever legally utilize unpaid volunteers.*** Typical authorized volunteer sites include established volunteer programs operated by charitable nonprofit organizations, governmental agencies, hospitals, and nursing homes.

Students may be considered to be "volunteers" within the meaning of the FLSA if the intent is clearly to donate their services for the public good. Schools cannot legally REQUIRE students to "volunteer" or perform unpaid public service as a way to gain vocational experience, as a condition of graduation, or as a prerequisite for other school activities. Only the courts may require or commit persons to perform unpaid public service work as part of a correctional program, in lieu of serving prison time, or while on "work release." Decisions must be based on the individual student CHOICE, and cannot be translated to a group activity site without meeting all guidelines for volunteerism for each student.

The Department of Labor will not assert an employment relationship to exist where work is performed on a bona fide volunteer basis. A volunteer is generally defined as an individual who performs hours of services for a public agency for civic, charitable, or humanitarian reasons. A volunteer performs these services without promise, expectation or receipt of compensation for services rendered. If these conditions are met, an individual will not be subject to the FLSA. The volunteer arrangement must satisfy guidelines established to protect students with disabilities from employment abuse.

Persons can be classified as "volunteers" in religious, charitable, or nonprofit organizations, although they displace regular employees, and despite the fact that they perform services economically advantageous to the "employer," such as mothers/fathers who assist in a school cafeteria or library, or drive vehicles or fold chairs for the Red Cross. However, students are not considered to be "volunteers" within the meaning of the FLSA if the intent of the student is clearly not to volunteer his/her services for the public good, but rather to allow for the individual to gain experience to allow him/her to obtain gainful employment. The FLSA provides a mechanism whereby students such as these can learn skills and be paid less than $4.25 per hour via a "school work experience program" certificate issued by the U.S. Department of Labor, Wage and Hour Division.

An individual may not be a volunteer for a public agency when the volunteer hours involve the same type of services which the individual is employed to perform for the same agency. Students employed in a paid placement are not allowed to "volunteer" the same type of services (any activity directly related to the student's job) during the week they are employed.

ILLUSTRATION

1. A student is provided the opportunity to participate in several meaningful educational activities or programs (e.g. paid placement in a retail bookstore, self-help skills training, independent living skills, job seeking skills training, and volunteering at the city zoo.) The student (where appropriate, a parent or guardian) CHOOSES to voluntarily participate at the city's established zoo volunteer program.
2. A student, along with his parents, decides it would be beneficial for him to donate some of his spare time to helping others. He signs up for and participates in an elective course entitled "Volunteering In My Community".

DOCUMENTATION

The following documentation should be incorporated into a written agreement signed by all parties including student, parent/guardian, school district representative, and employer:

☐ This an accepted and established (bonafide) volunteer position in the community.

☐ The student has been offered paid and nonpaid work choices, and chose nonpaid.

☐ The student has chosen this volunteer assignment.

☐ There other volunteers working for the organization in a similar capacity.

☐ All parties involved agree this is voluntary.

☐ All parties involved agree that pay is not contemplated.

IN-SCHOOL PLACEMENTS

OH-22

Pursuant to the provisions of Section 14(d) of the FLSA, Wage-Hour will take no enforcement action with respect to minimum wages for students employed by any school in their school district in various school-related work programs, provided that such employment is in compliance with applicable child labor provisions. **This non-enforcement policy is not applicable to special education students performing subcontract work or sheltered workshop-type work on school premises.**

OH-23

As part of their overall educational program, schools may permit or require students to engage in various school-related work programs, within their school district, conducted primarily for the benefit of the students for periods of no more than one hour per day (or an equivalent amount of overall time.) Also, the fact that a student may receive a minimal payment for participation in such activities would not necessarily create an employment relationship.

This position is adopted without prejudice to the rights of individuals to recover wages due through private actions afforded under Section 16(b) of the FLSA. If such employment is not in compliance with applicable child labor laws, the students so employed must be paid minimum wage and overtime for all hours worked in any position in which they were so employed. Also, the school will be subject to civil money penalties.

ILLUSTRATION

1. Student may help in school lunchrooms for periods of 30 minutes to one hour per day, do occasional classroom clean-up, perform minor clerical work in the school office or library, or engage in school activities connected with dramatics, student publications, sports, and the like.

DOCUMENTATION

☐ A written training agreement outlining the provisions for the in-school placement signed by all parties including student, parent/guardian, and school district representatives.

OH-24

If student does not quality as trainee, volunteer, or in-school worker, he or she must be paid a minimum wage of $4.25 per hour, or a commensurate wage if the school or employer has been authorized under a special minimum wage certificate, or $3.62 per hour if the employer utilized the full-time student certificate.

For additional information on employment relationship, refer to Appendix K.

WAGE PAYMENTS / MINIMUM WAGE

OH-25

For purpose of compliance with the FLSA, employees must receive a minimum wage of not less than $4.25 per hour as of April 1, 1991. State labor laws may mandate a minimum wage higher than the federal requirement of $4.25 per hour. The law most favorable to the employee supersedes the FLSA.

Employees do not have to be paid on an hourly basis simply because the federal statute specifies a minimum wage on an hourly basis. Employees may be paid on an hourly, salaried, commission, monthly, piecework, or any other basis, as long as pay covering each workweek equals or exceeds the minimum wage standard.

The minimum wage does not have to be paid in cash. It can be paid in whole or in part in board, lodging, or other facilities. Regarding "patient workers" employed in their institutions, no deductions can be made form wages to cover room, board, or other services provided by the facility. Such individuals must receive their wages free and clear, except for amounts deducted for taxes assessed, and any voluntary wage assignments directed by the employee. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or deduce the amount of overtime pay due under FLSA.

While the FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which FLSA does not regulate. For example, FLSA does not require:

(1) vacation, or holiday, severance, or sick pay;
(2) meal or rest periods, holidays off, or vacations;
(3) premium pay for weekend or holiday work;
(4) pay raises or fringe benefits; and

(5) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

Also, the FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work if the employee is at least 16 years old. These matters are for agreement between the employer and the employees or their authorized representative.

COMPENSABLE TIME

OH-26

Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is suffered or permitted to work. Compensable time includes not only those hours during which the individual is actually performing productive work but also includes those hours where no work is performed, but the individual is required to sit and wait for work assignments. Non compensable time includes time when the individual is completely relieved from duty and provided therapy or opportunity to participate in an alternative program or activity in the facility not directly related to the worker's job (e.g., self-help skills training, independent living skills, adult basic education, crafts which become the product of the individual making them.)

For additional information on working hours, refer to Appendix I.

OVERTIME COMPENSATION

OH-27

Overtime pay required by the FLSA refers to extra pay for hours worked over 40 during a workweek. The FLSA directs that covered employees be paid one and one-half times their regular hourly rate for hours worked in a workweek beyond 40. The following examples are based on a maximum 40-hour workweek.

(1) Hourly rate - (regular rate for an employee paid by the hour). If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

EXAMPLE: *An employee paid $4.80 an hour work 44 hours in a workweek. The employee is entitled to at least one and one-half times $4.80, or $7.20, for each hour over 40. Pay for the week would be $192 for the first 40 hours, plus $28.80 for the four hours of overtime - a total of $220.80.*

(2) Piece rate - The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in the same week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

EXAMPLE: *An employee paid on a piecework basis works 45 hours in a week and earns $207. The regular rate of pay for that week is $207 divided by 45, or $4.60 an hour. In addition to the straight-time pay, the employee is entitled to $2.30 (half the regular rate) for each hour over 40.*

(3) Salary - the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

EQUAL PAY PROVISION

The equal pay provisions of the FLSA prohibit wage differentials based on sex, between men and women employed in the same establishment, on jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission.

CHILD LABOR

OH-28

The FLSA contains provisions regarding child labor that prescribe both minimum wages, permissible occupations, and maximum hours to be worked. The standards affecting young workers vary for different age groups and for farm and nonfarm work. When placing youth and young adults into community-based employment options, educators and professionals need to consider the types of wages, occupations, and hours which are permissible for the varying age groups.

Child Labor in NONFARM WORK

OH-29

18 year olds may work at any time in any job.

16 or 17 year olds may work in any occupations **EXCEPT** those deemed hazardous by the Secretary of Labor, which include

1. Manufacturing or storing explosives
2. Driving a motor vehicle and being an outside helper
3. Coal mining
4. Logging and sawmilling
*5. Power-driven work-working machines
6. Exposure to radioactive substances and to ionizing radiations
7. Power-driven hoisting apparatus
*8. Power-driven metal-forming, -punching, and -shearing machines
9. Mining, other than coal mining
*10. Meat packing or processing (including power-driven meat slicing machines)
11. Power-driven bakery machines
*12. Power-driven paper-products machines
13. Manufacturing brick, tile, and related products
*14. Power-driven circular saws, band saws, and guillotine shears
15. Wrecking, demolition, and ship-breaking operations
*16. Roofing operations
*17. Excavation operations.

**Exemptions are provided for apprentices and student-learners under specified standards.*

14 or 15 year olds may work in office, clerical, and sales jobs. They may also work in a number of jobs in retail, food-service, and gasoline-service establishments, such as:

- Cashiering, price marking, and tagging (by hand or machine)
- Assembling orders, packing, and shelving
- Bagging and carrying out orders
- Serving foods and beverages
- Cleanup work
- Car washing and polishing
- Operating gas pumps and performing other courtesy services
- Cleaning vegetables & fruits, and wrapping, sealing, labeling, weighing, pricing, & stocking goods
- Errand and delivery work by foot, bicycle, or public transportation.

But may NOT work:

- During school hours
- Before 7 a.m. or after 7 p.m. (9 p.m. from June 1 through Labor Day)
- More than 18 hours a week during school weeks
- More than 3 hours a day on school days
- More than 40 hours a week in nonschool weeks
- More than 8 hours on nonschool days

Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours). Additional information on WECEPs is located in the following section titled, "Work Experience and Career Exploration Programs".

At any age

- Deliver newspapers to the consumer
- Act or perform in motion pictures or in theatrical, radio, or television productions
- Work for their parents, except in manufacturing, mining, or hazardous nonfarm jobs.

Additional information on child labor in nonfarm work is contained in Appendix L.

OH-30

Child Labor in FARM WORK

In farm work, permissible jobs and hours of work, by age, are as follows:

16 years and older may perform any job, whether hazardous or not, for unlimited hours;

14 or 15 years old may perform any nonhazardous farm job outside of school hours;

12 and 13 years old may work outside of school hours in nonhazardous jobs, either with parent's written consent or on the same farm as parents;

Under 12 years old may perform jobs on farms owned or operated by parents or, with parents' written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.
Local minors (permanent residents) 10 and 11 years old may be employed outside school hours under prescribed conditions to hand harvest short season crops for no more than 8 weeks between June 1 and October 15 in any calendar year, upon approval by the Secretary of Labor of an employer's application for a waiver from the child labor provisions for such employment.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

Additional information on child labor in farm work is contained in Appendix M.

☞ ***Violators of the child labor provisions are subject to a civil money penalty of up to $10,000 for each employee who was the subject of a violation.*** ☜

WORK EXPERIENCE AND CAREER EXPLORATION PROGRAMS

Sixteen is the minimum age for most nonfarm work performed during school hours. However, under the FLSA, Part 570.35a, youths 14 and 15 years old can be enrolled in and employed as part of a school-supervised and school-administered work experience and career exploration program (WECEP) which meets FLSA requirements.

The WECEP must meet the educational standards established and approved by the State Educational Agency (SEA) in the respective state. The SEA must file with the Administrator of the Wage-Hour Division a letter of application for approval of a state program as one not interfering with schooling or with the health and well-being of the students involved, and therefore not constituting child labor. The application must include information on several criteria. The Administrator of the Wage-Hour Division will either approve the application, or give prompt notice of any denial and the reasons for denial. The criteria to be used in consideration of an WECEP application are the following.

ELIGIBILITY

Any students aged 14 or 15 years who authoritative local school personnel identify as being able to benefit from the program are eligible to participate.

CREDITS

Students must receive school credits for both in-school related instruction and on-the-job experience.

SIZE

Each program must be a reasonable size. A unit of 12 to 25 students to one teacher-coordinator would generally be considered reasonable. Whether other sizes are reasonable depend on the individual facts and circumstances involved.

INSTRUCTIONAL SCHEDULE

Time must be allotted for the required classroom instruction in those subjects necessary for graduation under the State's standards. There must be regularly scheduled classroom periods of instruction devoted to job-related and to employability skill instruction.

TEACHER-COORDINATOR

Each program unit must be under the supervision of a school official to be designated for the purpose of the program as a teacher-coordinator who shall generally supervise the program and coordinate the work and education aspects of the program and make regularly scheduled visits to the work stations.

WRITTEN TRAINING AGREEMENT

A student cannot participate in the program until there has been made a written training agreement signed by the teacher-coordinator, the employer, and the student. The agreement will be signed or otherwise consented to by the student's parent or guardian.

OTHER PROVISIONS

Any other provisions of the program providing safeguards ensuring that the employment permitted will not interfere with the schooling of the minors or with their health and well-being may also be submitted for use in consideration of the application.

Every SEA having students in an approved WECEP must not allow for employment of enrollees in (1) manufacturing and mining, (2) occupations declared to be hazardous for the employment of minors between 16 and 18 years of age, and (3) occupations in agriculture declared to be hazardous for employment of minors below the age of 16. The names and addresses of each school enrolling WECEP students and the number of enrollees in each unit must be kept at the SEA office. A copy of the written training agreement for each student participating in the program must be kept in the SEA office or in the local education agency office. The records required must be kept for a period of 3 years from the date of enrollment in the program and must be made available for inspection or transcription to representatives of the Administrator of the Wage-Hour Division.

Employment of students enrolled in an approved WECEP must be confined to not more than 23 hours in any 1 week when school is in session and not more than 3 hours in any day when school is in session, any portion of which may be during school hours. The employment of a student enrolled in a WECEP must not have the effect of displacing a worker employed in the establishment of the employer

WECEPs are in force and effect for a period of two school years from the date of their approval by the Administrator of the Wage-Hour Division. A new application for approval must be filed at the end of that period. Failure to meet the requirements may result in withdrawal of approval.

States whose authority to administer WECEP expires June 30, 1994 include California, Florida, Idaho, Illinois, Maine, Minnesota, New Jersey, New York, North Dakota, and Ohio. States whose authority to administer WECEP expires June 30, 1995 include Virginia and Vermont.

OH-32

RECORDKEEPING

Employers who are subject to the FLSA must keep records for both covered and exempt employees. The regulations do not prescribe a particular order or form of records to be retained. Recordkeeping requirements vary depending upon the nature of the work performed by an employee. Records may be maintained on paper, microfilm or other basic source documents of an automatic data processing system, provided viewing equipment is accessible and reproduction identifiable. In addition to certain recordkeeping requirements, employers are required to display the Wage and Hour Division's minimum wage poster, which outlines the requirements of the FLSA. Records to be kept include:

RECORDKEEPING for PART 516 of the FLSA

1. Personal Information -
    a) Name in full as used for social security recordkeeping purposes and, on the same record, the employee's identifying symbol or number if such is used in place of name on any payroll records.
    b) Home address, including zip code.
    c) Date of birth, if under 19.
    d) Sex and occupation.
2. Hour & day workweek begins
3. Total hours worked each workday and each workweek
4. Total daily/weekly straight time pay
5. Regular rate used in overtime week
6. Total overtime pay per workweek
7. Deductions from or additions to pay
8. Total wages paid each pay period
9. Date of payment & pay period covered
10. I-9 forms
11. Age certificates for each minor employed (e.g., work permits where required or copy of birth certificate).

There are special recordkeeping requirement for learners, apprentices, workers with disabilities, students, and messengers employed under special certificates. Refer to the regulations governing these subminimum wage options for specific information on the records to be kept.

ENFORCEMENT PROCEDURES AND REMEDIES

OH-33

The FLSA can be enforced by private employee lawsuits or by actions taken by the Department of Labor. Authorized investigative procedures are used if DOL is involved. Ignorance of the law is no defense for employers. There is a two-year statute of limitations under the FLSA, extending to three years if a violation is willful. Schools and/or employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to civil money penalties of up to $1,000 per violation.

Employees can sue their employers for the recovery of back wages and liquidated damages. The Secretary of Labor can also bring a lawsuit on the employee's behalf for the recovery of back wages and liquidated damages, or for back wages and an injunction enjoining the employer from committing any further violations of the FLSA. An employee who sues can recover attorney's fees, while the Secretary of labor can not. The Department of Justice can criminally prosecute persons who commit willful violations of the FLSA. The Secretary of Labor has the power to initiate investigations to determine whether an employer has violated any provisions of the FLSA. An employer cannot retaliate against an employee for "whistle blowing."

INVESTIGATIONS

The FLSA authorizes representatives of the DOL to investigate and gather data concerning wages, hours, and other employment practices; enter and inspect an employer's premises and records; and question employees to determine whether any person has violated any provision of the FLSA. Every effort is made to resolve compliance and payment of back wages issues at the administrative level.

The employer must allow investigators onto the premises to serve an administrative subpoena to bring records for Wage and Hour Compliance officers to review. If an employer feels a subpoena is not sufficiently limited in scope, relevancy, or purpose so that compliance is unreasonable burdensome, the employer can question the reasonableness of the subpoena by raising objections in an action in district court before suffering any penalties for refusing to comply.

The Wage-Hour Division initiates investigations when complaints are filed and when particular industries are targeted for investigation. When complaints are filed, the agency assigns compliance officers to investigate. Generally, investigators will not inform employers of whether investigations are triggered by complaints or are a part of routine examinations of the particular industry. In the investigation, compliance officers of the Wage-Hour Division will usually make suggestions regarding any changes necessary or desirable regarding payroll, recordkeeping, or other practices to bring employers into compliance with the FLSA.

DOL Investigative Procedures

Wage and Hour Publication 1340 outlines the DOL investigative procedures which should be followed when a compliance officer calls upon an employer.

The compliance officer will
- Identify him/herself to you and show official credentials.
- Confer with your designated representative, making necessary explanations about the records needing

to be seen and approach to be take. The compliance officer will ask permission to conduct private interviews with some of your employees.

- Ask you to make space available for their use and to designate staff members who can help with questions about your records and payroll system.
- Ask to see certain records to determine what laws apply and what, if any, exemptions are available.
- Review payroll and time records.
- Interview certain employees to confirm information gathered.
- The compliance officer will meet with you or your representative about the investigative findings. If no violations were discovered, the compliance officer will tell you. If violations were found, you will be told what they are and how to correct them. If you owe back wages, the usual procedure is to ask you to compute and pay the amounts due

Following is a list of records to make available during a DOL investigation.

- A list of current school board members including superintendent's name and work address.
- A copy of the most recent financial statement.
- Covering the past 2 years, a list of all community work sites, all volunteer sites, and all in-school placements. Show addresses, list of students, and a very brief description of each placement. (DOL may need to be added to the school district's access sheet for records of students in special education.)
- All time and payroll records for all students in community work sites, volunteer sites, and in-school placements.
- For all students paid less than minimum wage, documentation that each individual is disabled for the work performed.
- A list of students with disabilities that could be interviewed.
- Have available copies of all time studies performed to establish piece rates or hourly rates for students being paid less than minimum wage.
- Prevailing wage documentation for all jobs in the last 2 years.
- List of all staff members showing name, position, degrees, salary, and brief description of duties.
- All INS I-9 forms.

OH-34

RECOVERY OF BACK WAGES

Listed below are methods which FLSA provides for recovering unpaid minimum and/or overtime wages.

❶ Wage-Hour may supervise payment of back wages.
❷ The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
❸ An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
❹ The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime.

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages. A 2-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a 3-year statute applies.

Additional information on the Fair Labor Standards Act is contained in Appendix G through Appendix P.

Payment of Subminimum Wages Under the FLSA

- Employment of Full-time Students (Part 519)
- Employment of Student-Learners (Part 520)
- Employment of Apprentices (Part 521)
- Employment of Learners (Part 522)
- Employment of Messengers (Part 523)
- Employment of Workers with Disabilities under Special Certificates(Part 525)
- Employment of Student-Workers (Part 527)

Payment of Subminimum Wages Under the FLSA

OH-35

Full-time students in institutions of higher education, retail and service establishments, and agriculture; student learners; apprentices; learners; messengers; student workers; and workers with disabilities may be employed at subminimum rates if the lower rates are deemed necessary by the Administrator of the Wage and Hour Division of DOL to prevent the curtailment of opportunities for employment. Special certificates must be obtained from the Wage and Hour Division prior to workers being employed at subminimum rates. Certificates will not be issued if the lower rate would curtail full-time job opportunities for others in the work force. The names, addresses and telephone numbers of the DOL contact persons for special employment programs is contained at the end of this section. Remember, if state labor laws are more stringent, the most stringent must be adhered to.

For the purposes of the targeted audience of this training document, certificates pertaining to full-time students, student-learners, apprentices, learners, messengers, and student workers will be reviewed. However, as applications for subminimum wage certificates covering workers with disabilities is of particular importance to this target audience, this type of certificate will be covered in more detail. A table located at the end of this section summarizes the options for payment of employees at subminimum wages. More detailed information on these subminimum wage options is contained in Appendix O and Appendix P.

OH-36

PART 519 Employment of Full-Time Students in Retail or Service Establishments, Agriculture, or Institutions of Higher Education

Full-time students in retail or service establishments, agriculture, or institutions of higher education may be employed at subminimum wages under special certificates issued by the DOL. The employer must file an application for a certificate before the start of such employment. The certificate is in effect for one year, and a copy of the certificate must be posted in a conspicuous place at the establishment. The wage rate in the certificate can not be less than 85% of the federal minimum wage rate. The employer must agree to employ no more than 6 full-time students at subminimum wages on any workday.

The provisions also limit the number of weekly hours of employment. Students are not permitted to work at subminimum wages for more than 8 hours a day, not for more than 40 hours a week when school is not in session, nor more than 20 hours a week when school is in session. Child labor laws must be adhered to. There are special recordkeeping requirements for this certificate.

For employment at subminimum wages in retail, service, or agriculture, a "full-time student" means a student who receives primarily daytime instruction at the physical location of a bona fide educational institution, in accordance with the institution's accepted definition of a full-time student. The student retains that status during holidays and summer breaks. For employment at subminimum wages in institutions of higher education, a "full-time student" means a student who meets the accepted definition of a full-time student of the institution of higher education which employs him/her; the student retains that status during holidays and breaks.

Full-time student applications and certificates are handled by the DOL Employment Standards Administration, Wage-Hour Division, Special Employment Programs office located in Dallas, Texas. (See DOL Contact List located at end of section for name, address, and telephone number of contact person)

PART 520 Employment of Student-Learners

Student-learners can be employment at subminimum wage rates under special certificates issued by the DOL. A "student-learner" is a student who is receiving instruction in an accredited school, college or university, and who is employed on a part-time basis, pursuant to a bona fide vocational training program. A "bona fide vocational training program" is one authorized and approved by a State board of vocational education, or other recognized educational body, and provides for part-time employment training. The employment training can be scheduled for a part of the work day or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student learner's course by an accredited school, college, or university.

The special minimum wage rate can not be less than 75% of the federal minimum wage rate. The certificate can not be issued retroactively.

The number of hours of employment training each week, when added to the hours of school instruction, can not exceed 40 hours. When school is not in session, the student-learner can work hours in addition to the weekly hours of employment training authorized by the certificate. However, the total hours worked can not exceed 8 hours on any such day. During the school term, when school is not in session for the entire week, the student-learner can work hours in addition to those authorized by the certificate. However, the total hours can not exceed 40 hours in any such week. There are special recordkeeping requirements for this certificate.

The following conditions must be satisfied before a special certificate will be issued authorizing the employment of a student-learner at subminimum wages.

(a) Any training program in which the student-learner will be employed must be a bona fide vocational training program.

(b) The employment of the student-learner at subminimum wages must be necessary to prevent the curtailment of employment opportunities.

(c) The student-learner must be at least 16 years of age, and at least 18 years of age to be employed in any activity prohibited by hazardous occupations orders.

PART 521 Employment of Apprentices

The DOL has the authority to issue special certificates to employers authorizing the employment of apprentices in "skilled trades" at subminimum wages. An "apprentice" is a worker at least sixteen years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade. A "skilled trade"

(a) is customarily learned in a practical way through training and work experience on the job;
(b) is clearly identified and commonly recognized throughout an industry;
(c) requires one year of more (2,000 or more hours) of work experience to learn;
(d) requires related instruction to supplement the work experience;
(e) is not merely a part of an apprenticeable occupation;
(f) involves the development of skill sufficiently broad to be applicable in like occupations throughout

an industry, rather than of restricted application to the products of any one company; and
(g) does not fall into any of the following categories: (1) selling, retailing, or similar occupations in the distributive field; (2) managerial occupations; (3) clerical occupations; or (4) professional and semi-professional occupations.

An apprenticeship program must conform with standards of apprenticeship including the following.

(a) Employment and training of the apprentice in a skilled trade.
(c) One year or more (2,000 or more hours) of work experience.
(c) A progressively increasing schedule of wages to be paid the apprentice which averages at least 50% of the journeyman's rate over the period of apprenticeship.
(d) A schedule of work processes or operations in which experience is to be given the apprentice on the job.
(e) Submission of the apprenticeship program and the apprenticeship agreement to the recognized apprenticeship agency for registration.
(f) Joint agreement to the apprenticeship program by the employer and the bona fide bargaining agent, where a bargaining agent exists.
(g) An indication that the number of apprentices to be employed conforms to the needs and practices in the community.
(h) Adequate facilities for training and supervision of the apprentice and the keeping of appropriate records concerning his progress.
(i) Related instruction, if available. (144 hours a year is normally considered necessary. Related instruction means an organized and systematic form of instruction which is designed to provide the apprentice with knowledge of the theoretical and technical subjects related to his trade. Such instruction may be given in a classroom, through correspondence courses, or other forms of self-study.)

PART 522 Employment of Learners

The DOL has the authority to approve payment of subminimum wage rates to employ learners in specified industries, including apparel, knitted wear, hosiery, shoe manufacturing, glove, cigar, luggage, small leather goods, ladies handbags, small electrical products, men's and boy's clothing, and office and clerical occupations. A learner is a worker whose total experience in an authorized learner occupation in the last three years is less than the period of time allowed as a learning period in that occupation. Employers must apply to DOL for learners certificates prior to employing learners at subminimum wage rates. Generally, a learners certificates will only be issued in cases where there are insufficient experienced workers available for employment in a particular trade.

PART 523 Employment of Messengers

Messengers can be employed at subminimum wage rates under special certificates authorized and approved by the DOL. Inquiries other than routine requests for information should be referred to the Washington, D.C., DOL, Branch of the Employment Standards Administration. There have been no messenger certificates issued in many years. There is no application form for a messenger certificate. Applications may be made by letter or brief addressed to the Administrator. The letter or brief must address the information contained in §523.4

PART 527 Employment of Student Workers

Student-workers can be employed at subminimum wage rates under special certificates authorized and approved by the DOL. A student-worker is a student who is receiving instruction in an educational institution and who is employed on a part-time basis in shops owned by the educational institution, for the purpose of enabling the student to defray part of his school expenses. The student-workers must be at least 16 years of age or al least 18 years of age if employed in hazardous occupations. The occupation for which the student-workers are receiving training must require a sufficient degree of skills to necessitate an appreciable learning period. The subminimum wage rate must not be less than 75% of the federal minimum wage. The certificate is issued for one year.

PART 525 Employment of Workers with Disabilities Under Special Certificates

Workers with disabilities can be employed at subminimum wage rates under special certificates. According to the FLSA, a disabled worker is one whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury. The wage rate payable to workers is based on comparative productivity, and is proportionately commensurate with the wage paid to experienced nondisabled workers performing essentially the same type of work in the same vicinity. The certificates will only be issued to applicable individuals who are disabled for the work to be performed, whose earning capacity is impaired to the extent that the individual is unable to earn at least the minimum wage. Individuals may only be compensated at a special minimum wage if the employer has obtained a certificate authorizing their payment from the appropriate regional office of the DOL.

OH-37

The DOL will consider several factors in determining whether special rates are necessary before issuing a certificates authorizing special minimum wage rates, including:

- the nature and extent of the individual's disability **(Remember, the individual must be disabled for the work performed)**;
- the prevailing wages of experienced nondisabled employees who engage in comparable work;
- the productivity of the disabled workers as compared to the nondisabled; and
- wage rates to be paid to workers with disabilities for work comparable to that performed by experienced disabled workers.

Before an employer will be granted a certificate, the employer must provide written assurances, such as regular review of the individuals' hourly rates at least every six months, and regular adjustments of wages at least annually to reflect changes in the prevailing wages paid to experienced non-disabled individuals employed in the locality for essentially the same type of work. Existing wage certificates may be renewed annually, and will not be denied before the employer has an opportunity to demonstrate compliance with all legal requirements. The DOL may revoke a certificate if violations are found and the employer refuses to comply.

DEFINITIONS

Employ

Is defined in FLSA as "to suffer or permit to work."

Employment Relationship

Arises whenever an individual, including an individual with a disability, is suffered or permitted to work. The determination of an employment relationship does not depend upon the level of performance or whether the work is of some therapeutic benefit. However, an individual does not become an employee if engaged in such activities as making craft products where the individual voluntarily participates in such activities and the products become the property of the individual making them or all of the funds resulting from the sale of the product are divided among the participants in the activity or are used in purchasing additional materials to make craft products.

Worker with a Disability

Means an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addition. The following, taken by themselves, are not considered disabilities for the purposes of this part: vocational, social, cultural, or educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and correctional parole or probation. Further, a disability which may effect earning or productive capacity for one type of work may not affect such capacity for another.

Special Minimum Wage

Is a wage authorized under a certificate issued to an employer under this part that is less than the statutory minimum wage.

Commensurate Wage

A special minimum wage paid to a worker with a disability which is based on the worker's individual productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, and quantity of work in the vicinity in which the individual under certificate is employed. For example, the commensurate wage of a worker with a disability who is 75% as productive as the average experienced nondisabled worker, taking into consideration the type, quality, and quantity of work of the disabled worker, would be set at 75% of the wage paid to the nondisabled worker. For purposes of these regulations, a commensurate wage is always a special minimum wage, i.e., a wage below the statutory minimum.

Experienced Worker

Means a worker who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period. Typically, such a worker will have received at least one pay raise after successful completion of the probationary or training period.

Patient Worker

A worker with a disability who is employed by a hospital or residential care facility where such worker received treatment or care. The worker does have to be a resident.

CRITERIA FOR EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER CERTIFICATES AT SPECIAL MINIMUM WAGE RATES

In order to determine that special minimum wage rates are necessary to prevent the curtailment of opportunities for employment, the following criteria is considered:

(1) The nature and extent of the disabilities for the individuals employed as these disabilities relate to the individual's productivity.

(2) The prevailing wages of experienced employees not disabled for the job who are employed in the vicinity in industry engaged in work comparable to that performed at the special minimum wage rate.

(3) The productivity of the workers with disabilities compared to the norm established for nondisabled workers through the use of a verifiable work measurement method or the productivity of experienced nondisabled workers employed in the vicinity on comparable work.

(4) The wage rates to be paid to the workers with disabilities for work comparable to that performed by experienced nondisabled workers.

OH-38

In order to be granted a certificate authorizing the employment of workers with disabilities at special minimum wage rates, the employer must provide the following written assurances concerning such employment:

(1) In the case of individuals paid hourly rates, the special minimum wage rates will be reviewed by the employer at periodic intervals at a minimum of once every six months; and

(2) Wages for all employees will be adjusted by the employer at periodic intervals at a minimum of once each year to reflect changes in the prevailing wages paid to experienced nondisabled individuals employed in the locality for essentially the same type of work.

PREVAILING WAGE RATES

OH-39

The prevailing wage rate is the wage paid to an experienced worker without a disability. The DOL recognizes that there may be more than one wage rate for a specific type of work in a given area. An employer must be able to demonstrate that the rate being used as prevailing for determining a commensurate wage was objectively determined.

The prevailing wage rate must be based upon the wage rate paid to experienced nondisabled workers. Employment services which only provide entry level wage data are not acceptable sources for prevailing wage information. There is no prescribed method for tabulating the results of a prevailing wage survey. The prevailing wage must be based upon work utilizing similar methods and equipment. Where the employer is unable to obtain the prevailing wage for a specific job to be performed on the premises, such as collating documents, it is acceptable to use as the prevailing wage the wage paid to experienced individuals employed in similar jobs such as file clerk or general office clerk, requiring the same general skill levels.

There are two methods for determining prevailing wage

(1) Employers of non-disabled (such as commercial businesses) may use as prevailing wage the wage rate paid to that employer's experienced employees performing similar work. Where a school places students with disabilities on the premises of the employer described above, the wage paid to the employer's experienced workers must be used as prevailing.

(2) An employer such as schools, school-to-work programs, transition programs, rehabilitation agencies that operate sheltered workshops, or entrepreneurial activities, which serve the disabled determine prevailing wage by ascertaining the wage rates paid to the experienced nondisabled workers of other employers in the vicinity. Such data may be obtained by surveying comparable firms in the area that employ primarily nondisabled workers doing similar work. See Part 525 for more detail.

The following information must be recorded in documenting the determination of prevailing wage rates:

OH-40

DOCUMENTATION OF PREVAILING WAGE RATE

(1) Date of contact with firm or other source;
(2) Name, address, and phone number of firm or other source contacted;
(3) Individual contacted within firm or source;
(4) Title of individual contacted;
(5) Wage rate information provided;
(6) Brief description of work for which wage information is provided;
(7) Basis for conclusion that wage rate is not based upon an entry level position.

A prevailing wage may not be less than the minimum wage specified in the FLSA.

OH-42

OH-43

ESTABLISHING PIECE RATES AND HOURLY RATES

OH-44

Appendix F contains information on how to determine piece rates and hourly rates for workers with disabilities in establishing commensurate wages. For additional assistance, contact the local DOL, Special Employment Programs office.

TERMS AND CONDITIONS OF SPECIAL MINIMUM WAGE CERTIFICATES

OH-41

Certificates are issued to employers and apply to all workers with disabilities at all branch locations including crews, supported employment and community worksites. The certificate is effective for one year and must renewed by reapplication. Workers must be paid commensurate wages for all hours worked and receive overtime pay for the hours worked in overtime. Prevailing wages must be adjusted at a minimum of once per year. Each worker with a disability (and, if appropriate, their parent/guardian) must be informed orally and in writing of the terms of the certificate. It is permissible to make copies of the certificate and provide copies to the workers.

APPLICATION & RENEWAL OF SPECIAL MINIMUM WAGE CERTIFICATES

The rehabilitation counselor or coordinating official of the school may submit a group application covering all of the students with disabilities and all of the employers participating in a school work experience program. Although there is a joint employment relationship (between the school and the local employer), the school pays the students' wages. The school and the employer are responsible for compliance with all applicable child labor laws, minimum wage standards, certificate and recordkeeping requirements.

The student participating in a school work experience program must be paid commensurate wage rates based upon the students' productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, quantity of work in the vicinity in which the students are employed. Application forms WH-226-MIS and WH-226A are to be used when applying for a school work experience program certificate.

The certificate is renewed annually. Approximately 45 days prior to the renewal date, the school will receive blank renewal application forms from the Department of Labor.

If a local employer wishes to pay students with disabilities directly, an application form can be submitted covering all of the students employed at the establishment. The same application forms are used: forms WH-226-MIS and WH-226A. Under Item 4 of form WH-226-MIS, please enter your school's name and address.

Full minimum wage of $4.25 per hour is due all students with disabilities until a certificate has been granted.

Each student with a disability and, where appropriate a parent or guardian, shall be informed, orally and in writing, of the terms of the certificate under which such student worker is employed. This requirement may be satisfied by making copies of the certificate available. If an application for renewal has been properly and timely filed, an existing subminimum wage certificate must remain in effect until the application for renewal has been granted or denied. Check to determine whether state permits are also required.

RECORDS TO BE KEPT

Employers who employ workers with disabilities under special minimum wage certificates must maintain certain records and have these records available for inspection. The records must include:

SPECIAL RECORDS FOR PART 525

- ✓ verification of the workers' disabilities;
- ✓ evidence of the productivity of each worker with a disability;
- ✓ the prevailing wages paid for non-disabled workers who perform the same type of work in the vicinity as that performed by the workers under the certificate;
- ✓ production standards for non-disabled workers for each job being performed by workers with disabilities; and
- ✓ all records required under Part 516, with some exceptions.

Work Adjustment Centers are also under the same requirement.

SPECIAL NOTICE:

TRAINING WAGE PROVISIONS NO LONGER ALLOWABLE

The 1989 Amendments to the FLSA included a provision permitting covered employers to pay eligible workers at a training wage under certain specified conditions.

Training wage provisions* of the 1989 FLSA Amendments became effective on April 1, 1990 and *expired on March 31, 1993.

SUBMINIMUM WAGE CERTIFICATES
Issued Under the FLSA Which Can be Used for Students

CERTIFICATE	REGULATION	LOWEST % OF FEDERAL MINIMUM WAGE	LIMIT TO HOURS AT CERTIFICATE RATE?	APPLICATION FORM
FULL-TIME STUDENTS Worker attends school primarily in the daytime in a bona fide educational institution. Can be issued to retail and service establishments, agricultural employment, or to institutions of higher education.	Part 519	85% ($3.62/hr)	Yes: See Regulations	WH-200MIS Contact: Dallas, TX W/H Office
STUDENT LEARNERS Age 16 or older. Worker is receiving instruction in an accredited school, college or university and is employed on a part-time basis pursuant to a bona fide vocational training program with organized plan of instruction in technical and industrial areas requiring substantial learning period.	Part 520	75% ($3.19/hr)	Yes: See Regulations	WH-205
APPRENTICES IN SKILLED TRADES Generally, age 16 or older. Allows for the employment of apprentices in skilled trades. The minor must be employed in a craft recognized as an apprenticeable trade. The apprenticeship must be registered with the DOL.	Part 521	50% of the journeyman's rate per the apprenticeship agreement authorized by a registered apprenticeship program.	Yes: See Regulations	Application is the apprenticeship agreement
LEARNER'S IN SPECIFIED INDUSTRIES Applicable to employment of learners in specified industries where an adequate supply of qualified experienced workers is not available for employment. Learner is a worker whose total experience in the industry within the past three years is less than the period of time allowed as a learning period for that occupation.	Part 522	Authorized wage rates are industry specific.	Yes: See Regulations	WH-209 WH-208 WH-359
MESSENGERS Allows for the employment of messangers to be engaged primarily in delivering letters and messages.	Part 523	There have been no messenger certificates issued in many years.	N/A	No application form is available
SHELTERED WORKSHOP/WORKERS WITH DISABILITIES Worker's earning capacity is impaired by disability for the work to be performed. Issued to most tupes of establishments and school work experience programs. Sheltered workshop or work centers meaning a program providing workers with disabilities with employment or other occupational rehabilitating activity.	Part 525	Commensurate wages, no minimum	No	WH-226MIS
STUDENT WORKERS Age 16 or older. The occupation for which the student'-worker receives training must require a sufficient degree of skill to necessitate an appreciable learning period. Student-worker is a student who is receiving instruction in an educational institution and who is employed on a part-time basis in shops owned by the eudcational institution for the purpose of enabling the student to defray part of school expenses.	Part 527	75% ($3.19/hr)	Yes: See Regulations	For application contact ESA, Wage-Hour, Branch of Special Employment Programs Office

WHO TO CONTACT FOR MORE INFORMATION ON SPECIAL EMPLOYMENT PROGRAMS

When developing community-based vocational education programs, or for more information on special employment options under the FLSA and other labor laws, contact the federal DOL regional office located in your region of the United States, or contact the state office of DOL in your respective state. The contact persons for DOL Special Employment Programs is located on the next page.

U.S. DEPARTMENT OF LABOR
Employment Standards Administration   Wage and Hour Division

CONTACT LIST

BRANCH OF SPECIAL EMPLOYMENT	BRANCH OF CHILD LABOR
Howard Ostmann, Chief U.S. Department of Labor Employment Standards Administration Wage and Hour Division 200 Constitution Avenue, N.W., Room S-3516 Washington, D.C. 20210 Telephone: (202) 219-8727	Arthur M. Kerschner, Chief U.S. Department of Labor Employment Standards Administration Wage and Hour Division 200 Constitution Ave., N.W. Washington, D.C. 20210 Telephone: (202) 219-7640

SECTION 14 SPECIALISTS

States	DOL Regional Office	States	DOL Regional Office
Connecticut Maine Massachusetts Rhode Island Vermont New Hampshire	Margaret MacDonald Boston Region DOL Office 1 Congress Street 11th Floor Boston, MA 02114 (617) 565-2095	Arkansas Louisiana New Mexico Texas Oklahoma	Patricia Davidson Dallas Region DOL Office 525 Griffin Square Room 858 Dallas, TX 75202 (214) 767-6897
New York New Jersey	William Devins New York Region DOL Office 201 Varick Street New York, NY 10014 (212) 337-2000	Iowa Kansas Missouri Nebraska	Karen Chaikin Kansas City Region DOL Office 2000 Federal Office Blg 911 Walnut Street Kansas City, MO 64106 (816) 426-5549 Verdis Greene (816) 426-5382
Delaware District of Columbia Maryland Pennsylvania Virginia West Virginia	James Bundick Philadelphia Region DOL Office 3535 Market Street Philadelphia, PA 19104 (215) 596-0102	Colorado Montana North Dakota So. Dakota Wyoming	Deltheia Lowery Denver Region DOL Office Federal Office Building 1961 Stout Street Room 1408 Denver, CO 80294 (303) 391-6783
Alabama Florida Georgia Mississippi No. Carolina So. Carolina Kentucky Tennessee	Berdelle W. Johnson Atlanta Region DOL Office Room 121 Peachtree Street, N.E. Atlanta, GA 30367 (404) 347-7015	Arizona California Guam Hawaii Nevada	Diane Reese San Francisco Region DOL Office Federal Building, FB-41 300 W. Congress St. Tucson, AZ 85701-1390 (602) 670-4822
Illinois Indiana Michigan Minnesota Ohio Wisconsin	Robert Halston Chicago Region DOL Office 230 South Dearborn Street Chicago, IL 60604 (312) 535-7280	Alaska Idaho Oregon Washington	Virginia Francis Seattle Region DOL Office 1111 3rd Avenue Suite 755 Seattle, WA 98174-3212 (206) 553-1914

Appendices

- Appendix A: Overhead Transparencies
- Appendix B: Guidelines for Implementing Community-based Educational Programs for Students with Disabilities
- Appendix C: Meeting the Needs of Youth with Disabilities
- Appendix D: Compliance Checklists
- Appendix E: Examples of DOL Application Forms
- Appendix F: Determining Piece Rates and Hourly Wage Rates
- Appendix G: Handy Reference Guide to the Fair Labor Standards Act
- Appendix H: Fair Labor Standards Act of 1938 as Amended
- Appendix I: Interpretative Bulletin, Part 785: Hour Worked Under the FLSA
- Appendix J: Fair Labor Standards Act; Records to be Kept by Employers; Final Rule
- Appendix K: Employment Relationship Under the Fair Labor Standards Act
- Appendix L: Child Labor Requirements in Nonagricultural Occupations Under the FLSA
- Appendix M: Child Labor Requirements in Agriculture Under the FLSA
- Appendix N: WECEP; Certificates of Age
- Appendix O: Employment at Subminimum Wages - Parts 519, 520, 521, 522, 523, 527
- Appendix P: Employment of Workers with Disabilities Under Special Certificates-Part 525

Appendix A: Overhead Transparencies

APPENDIX A

OVERHEAD TRANSPARENCIES

Applying the

Fair **L**abor **S**tandards **A**ct

When Placing Students
into

Community-based
Vocational
Education

OH-1

CONTENT OF FLSA TRAINING

❶ Introduction & Overview

❷ Relationship to Federal Initiatives

❸ Applicable Federal & State Wage Laws

❹ Fair Labor Standards Act

FAIR LABOR STANDARDS ACT

- Coverage
- Employment Relationship
- Wage Payments
- Compensable Time
- Overtime
- Equal Pay
- Child Labor
- Recordkeeping
- Enforcement
- Investigations
- Recovery of Back Wages

FAIR LABOR STANDARDS ACT

Payment of Subminimum Wages

- ☞ Full-Time Students
- ☞ Student-Learners
- ☞ Apprentices
- ☞ Learners
- ☞ Messengers
- ☞ Workers with Disabilities
- ☞ Student-Workers

U.S. Department of Labor

- Concerned with all work situations.
- Where an employment relationship exists.
- Particularly off-campus work sites and on-campus sites involving outside contractor.
- Where federal and state wage laws.

FAIR LABOR STANDARDS ACT

Individuals with Disabilities Education Act

Carl D. Perkins Vocational and Applied Technology Education Act

Job Training Partnership Act

Rehabilitation Act

School-to-Work Opportunities Act

Americans with Disabilities Act

Department of Labor enforces:

- **FAIR LABOR STANDARDS ACT**
- Davis-Bacon & Related Acts
- Walsh-Healey Public Contracts Act
- Service Contract Act
- Contract Work Hours and Safety Standards Act
- Immigration & Nationality Act
- Wage Garnishment Law
- Employee Polygraph & Protection Act
- Family & Medical Leave Act

FLSA administered & enforced by

☛ Department of Labor
Wage-Hour Division

FLSA establishes

❶ Minimum Wage
❷ Overtime Pay
❸ Equal Pay
❹ Recordkeeping
❺ Child Labor

Employer covered include

❶ Enterprise with gross sales/business volume of $500,000+ per year

❷ Residential care facility/hospital for physically, mentally ill, disabled, elderly

❸ School for children who are mentally, physically disabled, gifted

❹ Preschool, elementary, secondary school

❺ Institution of higher education

❻ Public agency (e.g., governmental agency)

❼ Joint employment

EMPLOYMENT RELATIONSHIP

Requires an "**employer**" and an "**employee**" and the **act or condition of employment.**

"Employer"	includes any person acting directly or indirectly in the interest of an employer in relation to an employee **and includes a public agency.**
"Employee"	means any individual employed by an employer.
"Employ"	means ***to suffer or permit to work.***

UNPAID WORK EXPERIENCE

❶ TRAINEE

❷ VOLUNTEER

❸ IN-SCHOOL

6 TRAINEE CRITERIA

➊ **Training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school**

(Curriculum is followed, students under continued & direct supervision by representatives of school or employee of business)

➋ **The training is for benefit of students, and such placements are not made to meet labor needs of business.**

❸ Students do not displace regular employees, vacant positions not filled, employees not relieved of assigned duties, and student not performing services that, although not ordinarily performed by employees, clearly are of benefit to business.

❹ Employer derives no advantage from activities of students, and on occasion operations actually impeded.

❺ **Students not necessarily entitled to job at conclusion of training period**

(Once student has become employee, cannot be considered trainee at that site unless in a clearly distinguishable occupation)

❻ **Employer and students understand not entitled to wages for time spent in training.**

TRAINEE ILLUSTRATIONS

In hospital, student shadowing a nurse, following and observing but NOT helping.

In a supermarket, student does simulated work such as practicing ringing up baskets of groceries collected by other students or the teacher, making change, learning transactions and returning groceries to shelves. Nothing was sold to actual customers.

A student entering worthless data on a company computer which is not used to conduct business.

GUIDELINES FOR COMMUNITY-BASED EDUCATIONAL PROGRAMS FOR STUDENTS WITH DISABILITIES

❶ Participants will be youth with physical and or mental disabilities for whom competitive employment at or above minimum wage is not immediately obtainable and who, because of disability, need intensive on-going support

❷ Participation will be for vocational exploration, assessment, or training in a community-based placement work site under the general supervision of public school personnel.

❸ Community-based placements will be clearly defined components of IEPs developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative vocational education components will be included in the students' IEP.

❹ Information contained in IEP does not have to be made available; however documentation of student's enrollment in community-based placement program will be available to DOL and DOE. The student and parent/guardian of student must be fully informed of the IEP and community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle student to wages.

❺ The activities of students at community-based placement site do not result in immediate advantage to business. The DOL will look at several factors.

1) There has been no displacement of employees, vacant positions not filled, employees not relieved of assigned duties, and student not performing services, that although not ordinarily performed by employees, clearly are benefit to business.

2) Students under continued and direct supervision by representatives of school or employees of business.

3) Placements made according to requirements of student's IEP and not to meet labor needs of business.

4) Such placements are made according to the requirements of the student's IEP and not to meet the labor market needs of the business.

5) The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.

⑥ While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:

Vocational exploration	5 hrs @ job experienced
Vocational assessment	90 hrs @ job experienced
Vocational training	120 hrs @ job experienced

⑦ Students are not entitled to employment at the business at conclusion of IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.

VOLUNTEER

- ✔ Accepted and established (bona fide) volunteer position in the community
- ✔ Student chose to volunteer, after being offered paid and nonpaid options.
- ✔ Others are volunteering for the organization in a similar capacity.
- ✔ All parties agree this is voluntary.
- ✔ All partied involved agree that pay is not contemplated

OH-21

IN-SCHOOL PLACEMENTS

Wage-Hour will not enforce the FLSA with respect to minimum wages for students employed by any school in their district in various school-related work programs provided that such employment is in compliance with child labor provisions.

This no-enforcement policy does not apply to special education students performing subcontract work or sheltered workshop-type work on the school premises.

As part of overall educational program,

- schools may permit students to engage in school-related work programs,
- within their school district,
- conducted primarily for the benefit of the students,
- for periods of no more than one hour per day.
- May receive minimum payment for the activity.
- EXCEPTION: Outside contractor doing business on the school grounds.

If student does not quality as trainee, volunteer, or in-school worker -

Must be paid minimum wage of $4.25 @ hour

OR

Commensurate wage if school/employer has authorized subminimum wage certificate

OR

$3.62 @ hour if utilizing full-time student certificate

FEDERAL MINIMUM WAGE
$4.25 @ hour

State labor laws may require higher wage rate.

The most favorable law supersedes FLSA.

COMPENSABLE TIME

Covered employees must be paid for all hours worked in a workweek.

"Hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other precribed place of work.

Noncompensable time includes time when individual is relieved from duty and provided therapy or opportunity to participate in alternative program or activity in facility not directly related to the worker's job.

OVERTIME COMPENSATION

Overtime must be paid at a rate at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given time of employment.

Determined by

❶ HOURLY RATE

❷ PIECE RATE, or

❸ SALARY

CHILD LABOR PROVISIONS

❶ Designed to protect the educational opportunities of minors.

❷ Prohibit their employment in jobs and under conditions detrimental to their health or well-being.

❸ Provisions include restrictions on hours of work for minors under 16.

❹ Lists hazardous occupations orders for both farm and nonfarm jobs declared by the Secretary of Labor as too dangerous for minors to perform.

FARM JOBS (CHILD LABOR)

In farm work, permissible jobs and hours of work, by age, are:

- ✗ 16 years and older: any job, whether hazardous or not, for unlimited hours.
- ✗ 14 & 15 years old: any nonhazardous farm job outside of school hours.
- ✗ 12 & 13 years old: outside of school hours in nonhazardous jobs, either with parent's written consent or on same farm as parents.
- ✗ Under 12 years old: jobs on farms owned or operated by parents, or with parents' written consent, outside of school hours in nonhazardous jobs on farms non covered by minimum wage requirements.

NONAGRICULTURAL JOBS (CHILD LABOR)

In nonfarm work, the permissible jobs and hours of work, by age:

✘ 18 years or older: any job, whether hazardous or not, for unlimited hours.

✘ 16 & 17 years old: any nonhazardous job, for unlimited hours.

✘ 14 & 15 years old: work outside of school hours in various nonhazardous jobs under following conditions:
  - No more than 3 hours on school day
  - 18 hours in school week
  - 8 hours on a nonschool day
  - 40 hours in a nonschool week

WORK EXPERIENCE AND CAREER EXPLORATION PROGRAMS

14 and 15 year olds can be enrolled in and employed as part of a school-administered and school-supervised work experience and career exploration program (WECEP) which meets FLSA requirements.

WECEP must meet the standards established and approved by the State Educational Agency (SEA). SEA must receive DOL approval to administer WECEP. Approvals are in effect for 2 years.

Criteria that must be addressed in SEA application for WECEP include

- Eligibility
- Credits
- Size
- Instructional Schedule
- Teacher Coordinator
- Written Training Agreement
- Child Labor Provisions
- Not Interfere with Schooling, Health, Well-Being

Working hours: Not more than 23 hours in any 1 week when school is in session, and not more than 3 hours in any day when school is in session, any portion of which may be during school hours.

Recordkeeping

Part 516 Requirements

❶ Personal information
❷ Hour & day workweek begins
❸ Total hours worked each work day and workweek
❹ Total daily/weekly straight time pay
❺ Regular rate used in overtime week
❻ Total overtime pay per workweek
❼ Deductions from or additions to pay
❽ Total wages paid each pay period
❾ Date of payment & pay period covered
❿ I-9 forms

Age certificates (work permits, if required/birth certificates) for each minor employed

ENFORCEMENT

Wage-Hour's enforcement of FLSA carried out by investigators throughout the U.S.

Where violations are found, they also may recommend changes in employment practices, in order to bring employer into compliance with the FLSA.

Willful violations may be prosecuted criminally and violator fined up to $10,000.

Violators of child labor provisions subject to civil money penalty of up to $10,000 for each employee who was the subject of a violation.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements subject to civil money penalties of up to $1,000 per violation.

RECOVERY OF BACK WAGES

Method for recovering unpaid minimum and/or overtime wages.

- ☹ Wage-Hour may supervise payment of back wages.
- ☹ Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
- ☹ Employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
- ☹ Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful witholding of proper minimum wage and overtime pay.

FAIR LABOR STANDARDS ACT

Payment of Subminimum Wages

- Full-Time Students
- Student-Learners
- Apprentices
- Learners
- Messengers
- Workers with Disabilities
- Student-Workers

SUBMINIMUM WAGE CERTIFICATES

Issued Under the FLSA Which Can be Used for Students

CERTIFICATE	REGULATION	LOWEST % OF FEDERAL MINIMUM WAGE	LIMIT TO HOURS AT CERTIFICATE RATE?	APPLICATION FORM
FULL-TIME STUDENTS Worker attends school primarily in the daytime in a bona fide educational institution. Can be issued to retail and service establishments, agricultural employment, or to institutions of higher education.	Part 519	85% ($3.6 /hr)	Yes: See Regulations	WH-200MIS Contact: Dallas, TX W/H Office
STUDENT LEARNERS Age 16 or older. Worker is receiving instruction in an accredited school, college or university and is employed on a part-time basis pursuant to a bona fide vocational training program with organized plan of instruction in technical and industrial areas requiring substantial learning period.	Part 520	75% ($3.19/hr)	Yes: See Regulations	WH-205
APPRENTICES IN SKILLED TRADES Generally, age 16 or older. Allows for the employment of apprentices in skilled trades. The minor must be employed in a craft recognized as an apprenticeable trade. The apprenticeship must be registered with the DOL.	Part 521	50% of the journeyman's rate per the apprenticeship agreement authorized by a registered apprenticeship program.	Yes: See Regulations	Application is the apprenticeship agreement
LEARNER'S IN SPECIFIED INDUSTRIES Applicable to employment of learners in specified industries where an adequate supply of qualified experienced workers is not available for employment. Learner is a worker whose total experience in the industry within the past three years is less than the period of time allowed as a learning period for that occupation.	Part 522	Authorized wage rates are industry specific.	Yes: See Regulations	WH-209 WH-208 WH-359
MESSENGERS Allows for the employment of messengers to be engaged primarily in delivering letters and messages.	Part 523	There have been no messenger certificates issued in many years.	N/A	No application form is available
SHELTERED WORKSHOP/WORKERS WITH DISABILITIES Worker's earning capacity is impaired by disability for the work to be performed. Issued to most tupes of establishments and school work experience programs. Sheltered workshop or work centers meaning a program providing workers with disabilities with employment or other occupational rehabilitating activity.	Part 525	Commensurate wages; no minimum	No	WH-226MIS
STUDENT WORKERS Age 16 or older. The occupation for which the student-worker receives training must require a sufficient degree of skill to necessitate an appreciable learning period. Student-worker is a student who is receiving instruction in an educational institution and who is employed on a part-time basis in shops owned by the eudcational institution for the purpose of enabling the student to defray part of school expenses.	Part 527	75% ($3.19/hr)	Yes: See Regulations	For application contact ESA, Wage-Hour, Branch of Special Employment Programs Office

Employment of Workers with Disabilities Under Special Certificates

Requirements

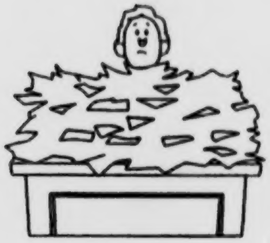
PERSON MUST BE DISABLED FOR THE WORK PERFORMED

COMMENSURATE WAGES MUST BE PAID

PAY IS BASED ON INDIVIDUAL'S PRODUCTIVITY

PROMISE TO:

- MEASURE AT LEAST EVERY SIX MONTHS
- CONDUCT ANNUAL PREVAILING WAGE STUDY
- ADJUST WAGES AS A RESULT OF STUDY



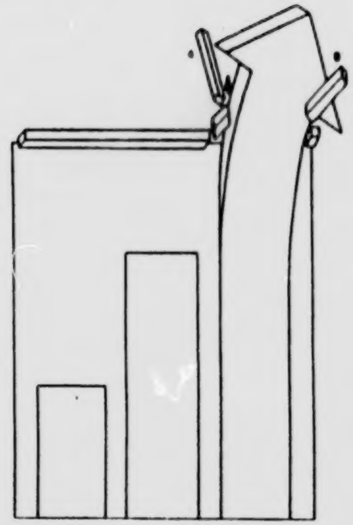
OH-38

PROVE:

- PRODUCTIVITY OF INDIVIDUAL
- PRODUCTIVITY OF STANDARD SETTER
- VALIDITY OF MEASUREMENT SYSTEM

PREVAILING WAGE INFORMATION

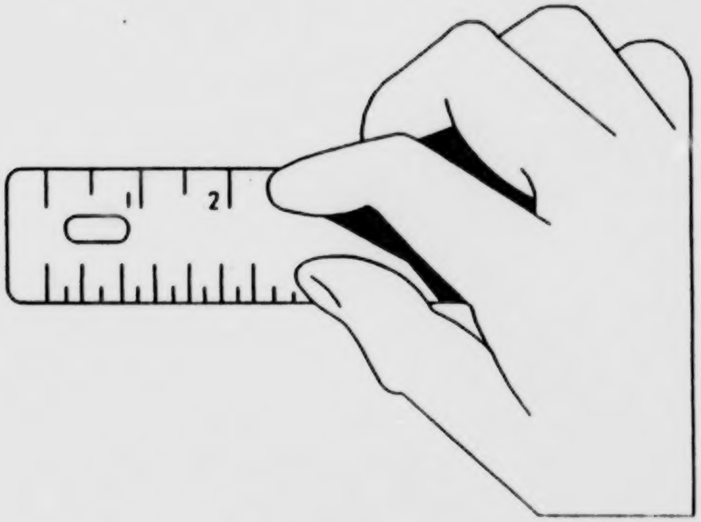
- DATE OF CONTACT
- NAME, ADDRESS AND PHONE
- INDIVIDUAL CONTACTED
- TITLE
- WAGE RATE DATA
- DESCRIPTION OF WORK
- PROOF NOT ENTRY WAGE



MUST PAY OVERTIME

INFORM OF TERMS OF CERTIFICATE

MEASURE PRODUCTIVITY



- NORMS FOR NONDISABLED
- VERIFIABLE WORK MEASUREMENT METHOD

PIECE RATING IS PREFERABLE

OH-42

TIME STUDIES MUST INCLUDE

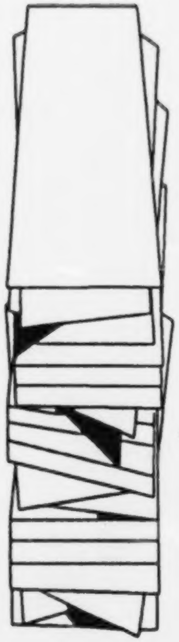
- OPERATOR PERFORMANCE RATING
- PERSONAL FATIGUE AND DELAY TIME (15%)
- PROOF THAT METHOD IS SAME AS DAILY SETUP

HOURLY EMPLOYEES MUST

- BE EVALUATED WITHIN FIRST MONTH
- BE EVALUATED AT LEAST EVERY 6 MONTHS
- BE EVALUATED WHEN CHANGING JOBS
- BE EVALUATED WHEN THERE IS OBVIOUS IMPROVEMENT
- HAVE WAGES ADJUSTED NEXT FULL PAY PERIOD

MAINTAIN RECORDS TO INCLUDE:

- VERIFICATION OF DISABILITIES
- PROOF OF PRODUCTIVITY
- PREVAILING WAGES
- PRODUCTION STANDARDS
- PROOF OF HOURS WORKED



Appendix B: Guidelines for Implementing Community-based Educational Programs for Students with Disabilities

APPENDIX B

Guidelines for Implementing Community-based Educational Programs for Students with Disabilities

U.S. Department of Education
Office of Special Education and Rehabilitative Services
OSEP Memorandum 92-20

September 21, 1992

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP 1992

September 21, 1992

OSEP MEMORANDUM

Contact	
Name :	William Halloran
Telephone:	(202) 205-8112

OSEP 92- 20

TO : Chief State School Officers

FROM : Judy A. Schrag
Director
Office of Special Education Programs

SUBJECT: Guidelines for Implementing Community-based Educational Programs for Students with Disabilities

A number of State and local educational agencies have contacted the Office of Special Education Programs (OSEP) seeking guidance in implementing community-based education programs, that comply with the provisions of the Fair Labor Standards Act (FLSA).

The intent of the FLSA is to ensure that individuals are not exploited in our Nation's workplace. The intent of community-based training for students with disabilities is to provide structured educational activities which will lead to employment in their communities. Community-based training has been demonstrated to be an extremely effective strategy for improving employment outcomes. However, the expansion of community-based educational programs have often been slowed because of a need for further guidance pertaining to the implementation of the FLSA.

The U.S. Departments of Education and Labor have worked together to develop guidelines that detail the criteria to be met by educational agencies to ensure that the U.S. Department of Labor will not assert an employment relationship for purposes of the FLSA. A copy of these Guidelines is attached for your review and use. Also, attached is a copy of a "Dear Colleague" letter that gives background information and a Statement of Principle.

OSEP will be working with the recently funded Institute to Evaluate and Provide Technical Assistance to States Implementing Cooperative Projects to Improve Transition Services, to develop technical assistance materials in an effort to provide technical assistance to the field.

If you have questions regarding the attached information, please call Dr. William Halloran at (202) 205-8112.

Attachments

cc: State Special Education Directors
Special Interest Group Representatives
OSEP Technical Assistance and Dissemination Providers
All OSEP Staff

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Dear Colleague:

The Departments of Education and Labor have collaborated to promote opportunities for educational placements in the community for students with disabilities while assuring that applicable labor standards protections are strictly observed.

Pursuant to the Individuals with Disabilities Education Act (IDEA), individualized education programs are developed to provide students with disabilities an opportunity to learn about work in realistic settings and thereby help such students in the transition from school to life in the community. Since the affirmation of students' rights to an appropriate free public education in 1975, many students with disabilities have benefitted from participation in vocational education programs in their public schools. Students with more severe disabilities, however, have experienced fewer benefits from participation in such programs. Alternative, community-based, and individualized education and training programs have emerged to meet their needs.

Our Departments share an interest in promoting educational experiences that can enhance success in school-to-work transition and the prospects that these students become effective, productive workforce participants and contributors to their community. At the same time, these students must be afforded the full protection of the nation's labor laws and not be subject to potential abuse as they start this transition through community-based educational experiences.

Existing Department of Labor guidelines which define "employees" for purposes of applying the requirements of the Fair Labor Standards Act (FLSA) do not specifically address community-based education programs for students with disabilities. To assist program administrators in developing programs or making placements that do not create questions about the establishment of an employment relationship between the students and partici-pating businesses in the community, the Employment Standards Administration (Department of Labor), and the Offices of Vocational and Adult Education, and Special Education and Rehabilitative Services (Department of Education) have developed the following guidance.

STATEMENT OF PRINCIPLE

The U.S. Departments of Labor and Education are committed to the continued development and implementation of individual education programs, in accordance with the Individuals with Disabilities Education Act (IDEA), that will facilitate the transition of students with disabilities from school to employment within their communities. This transition must take place under conditions that will not jeopardize the protections afforded by the Fair Labor Standards Act to program participants, employees, employers, or programs providing rehabilitation services to individuals with disabilities.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

GUIDELINES

Where ALL of the following criteria are met, the U.S. Department of Labor will NOT assert an employment relationship for purposes of the Fair Labor Standards Act.

- *Participants will be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting.*

- *Participation will be for vocational exploration, assessment, or training in a community-based placement work site under the general supervision of public school personnel.*

- *Community-based placements will be clearly defined components of individual education programs developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative vocational education components will be included in the students' Individualized Education Program (IEP).*

- *Information contained in a student's IEP will not have to be made available; however, documentation as to the student's enrollment in the community-based placement program will be made available to the Departments of Labor and Education. The student and the parent or guardian of each student must be fully informed of the IEP and the community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the student-participant to wages.*

- *The activities of the students at the community-based placement site do not result in an immediate advantage to the business. The Department of Labor will look at several factors.*

    1) *There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.*

    2) *The students are under continued and direct supervision by either representatives of the school or by employees of the business.*

    3) *Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.*

    4) *The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.*

- *While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:*

Vocational exploration	*5 hours per job experienced*
Vocational assessment	*90 hours per job experienced*
Vocational training	*120 hours per job experienced*

- *Students are not entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.*

It is important to understand that an employment relationship will exist unless all of the criteria described in this policy guidance are met. Should an employment relationship be determined to exist, participating businesses can be held responsible for full compliance with FLSA, including the child labor provisions.

Businesses and school systems may at any time consider participants to be employees and may structure the program so that the participants are compensated in accordance with the requirements of the Fair Labor Standards Act. Whenever an employment relationship is established, the business may make use of the special minimum wage provisions provided pursuant to section 14(c) of the Act.

We hope that this guidance will help you achieve success in the development of individualized education programs.

ROBERT R. DAVILA
Assistant Secretary
Office of Special Education
and Rehabilitative Services
U.S. Department of Education

Cari M. Dominguez
CARI M. DOMINGUEZ
Assistant Secretary
Employment Standards
Administration
U.S. Department of Labor

Betsy Brand
BETSY BRAND
Assistant Secretary
Office of Vocational and
Adult Education
U.S. Department of Education

APPENDIX C

Meeting the Needs of Youth with Disabilities:

Handbook for Implementing
Community-based Vocational Education Programs
According to the Fair Labor Standards Act

National Transition Network
University of Minnesota

The Study Group
Germantown Maryland

January, 1994

Appendix C: Meeting the Needs of Youth with Disabilities

Meeting the Needs of Youth with Disabilities:

Handbook for Implementing Community-based Vocational Education Programs According to the Fair Labor Standards Act

The National Transition Network (NTN) was established on October 1, 1992 through a cooperative agreement (H158G20002) between the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), and the Institute on Community Integration at the University of Minnesota. The purpose of the NTN is to provide technical assistance and evaluation services to states implementing five-year systems change projects on transition of youth with disabilities from school to post-school activities.

The NTN provides these technical assistance and evaluation services through a collaborative network of the following universities and parent and consumer organizations:

University of Minnesota

University of Vermont

University of Illinois, Urbana-Champaign

Colorado State University

University of Arkansas

Technical Assistance for Parent Programs of Boston, MA

PACER Center of Minneapolis, MN

For further information about the NTN, please contact:

Dr. David R. Johnson, Project Director
6 Pattee Hall
150 Pillsbury Drive SE
University of Minnesota
Minneapolis, MN 55455
(612) 624-1062
TDD: (612) 297-5353 or (800) 627-3529

The Study Group, Inc. is a corporation providing technical services to education, health, and human services organizations. For further information about The Study Group, Inc. please contact:

Michael Norman
Patricia Bourexis
11 Lake Park Court
Germantown, MD 20874-5400
(301) 428-0258

Meeting the Needs of Youth with Disabilities:

Handbook for Implementing Community-based Vocational Education Programs According to the Fair Labor Standards Act

Marlene Simon and Brian Cobb
National Transition Network

Michael Norman and Patricia Bourexis
The Study Group

January, 1994

nded by: U.S. Department of Education, Office of Special Education and Rehabilitative Services, Cooperative Agreement H158620002. Project fficer: William Halloran. The handbook was prepared pursuant to a cooperative agreement with the U.S. Department of Education, Office of Special Education and Rehabilitative Services. Contractors undertaking such projects are encouraged to express freely their judgment in professional and technical matters. Therefore, points of view or opinions do not necessarily represent offficial position or policy of either the U.S. Department of Education or the U.S. Department of Labor.

The development of this handbook has involved the combined effort of a number of people and organizations. We wish to offer special thanks to:

- The U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, especially Mike Vader and Wendell Johnson;
- The U.S. Department of Education, Office of Vocational and Adult Education, especially Howard Hjelm and Ronald Castaldi;
- The U.S. Department of Labor, especially Howard Ostman, Judy Brotman, and Daniel Sweeny;
- Paul Hippolitis of the President's Committee on Employment of People with Disabilities;
- Community-based vocational education service providers, especially:
  - Ginny Brennan, Program Specialist, Vocational Education, Fairfax County Public Schools, Virginia.
  - Cindy Russell, Community Site Development Coordinator, Fairfax County Public Schools, Virginia.
  - Carolyn Ebeler, Vocational Coordinator, Fairfax County Schools, Virginia.
  - Minna Vogel, Teacher, Fairfax County Public Schools, Virginia.
  - Verna Marie Chiarello, Transition Coordinator, Montgomery County Public Schools, Maryland.
  - Richard Luecking, Executive Director, TransCen, Inc., Montgomery County, Maryland.
- The Regional Resource and Federal Centers; and
- The Transition State Systems Change Grantees:

Arkansas Department of Education
California Department of Education
Rocky Mountain Resource and Training Institute
Connecticut State Department of Education
Hawaii Department of Education
Iowa Department of Education
Kansas State Board of Education
Kentucky Department of Education
Maine Department of Education
Massachusetts Department of Education
Minnesota Department of Education
Nebraska Department of Education
New Hampshire Department of Education
New Mexico State Department of Education
New York State Education Department
North Carolina Department of Public Instruction
North Dakota Department of Public Instruction
Oregon Department of Education
Texas Education Agency
Utah State Office of Education
Vermont Department of Education
Virginia Department of Education
State of Washington
West Virginia Department of Education

Table of Contents

Page

Section I Introduction 1

The Goal of Productive Employment for All Students 2
The Community-Based Vocational Education Approach 3
The Requirements of the Fair Labor Standards Act 5

Section II Questions and Answers 9

Requirements for Participation 11
Documentation Issues 12
Program Supervision 13
Instructional Programming 14
The Educational Relationship vs. the Employment Relationship 16

Section III Student Examples 19

Example 1: Vocational Exploration in a Rural Community 22
Example 2: Vocational Assessment in a Cleaning Services Company 29
Example 3: Vocational Training in a Hotel Laundry 34
Example 4: Cooperative Vocational Education in a Restaurant 39
Example 5: Vocational Exploration in a Suburban Community 43
Example 6: Vocational Assessment in a Large Business 47
Example 7: Vocational Training in Three Community Settings 51
Example 8: Cooperative Vocational Education in a Bank 55

Appendix A Organizations Providing Assistance in the Planning of Transition Services for Students with Disabilities 59

Appendix B U.S. Departments of Labor and Education Guidelines for Implementing Community-Based Vocational Education Programs for Students with Disabilities 69

Section I

Introduction

Introduction

Community-based Vocational Education (CBVE) is an effective approach in delivering vocational education and training to students with disabilities. The CBVE approach delivers these services in typical community work settings rather than in conventional school environments. Because CBVE activities take place in work settings, they must comply with the provisions of the Fair Labor Standards Act (FLSA) administered through the U.S. Department of Labor.

Recent amendments to the Individuals with Disabilities Education Act (IDEA) and guidelines adopted by the U.S. Departments of Labor and Education encourage the operation of CBVE programs. Amendments to IDEA require transition services planning and implementation for students with disabilities; U.S. Departments of Labor and Education guidelines ensure these services can be delivered in community work settings according to the FLSA.

This ***Handbook for Implementing Community-based Vocational Education Programs According to the Fair Labor Standards Act*** provides guidance to schools operating CBVE programs, and encourages the adoption of CBVE programs by schools not presently using this approach. By following the guidelines and examples contained in the handbook, schools can proceed with confidence to operate effective CBVE programs consistent with the FLSA.

There are three sections in this handbook. Section One introduces the events and actions leading to the development of CBVE and guidelines promoting this approach consistent with the FLSA. Section Two presents answers to the questions most frequently asked by school personnel in carrying out CBVE programs consistent with the FLSA. Section Three describes the CBVE experiences of eight students between the ages of 14 and 21. Sample forms, agreements, and supporting documentation required under IDEA and FLSA are included in these examples whenever possible.

Appendices to the handbook provide additional resource information including: (1) organizations providing assistance in planning and delivering transition services to students with disabilities, (2) contact points within the U.S. Department of Labor Wage and Hour Division providing guidance with the FLSA, and (3) copies of FLSA regulations related to the employment of students with disabilities.

The Goal of Productive Employment for All Students

In 1990, the president and the governors adopted six ambitious national education goals. These goals apply to all students. They require that all students leave school literate and with the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. Foremost among these rights is productive employment in our modern economy, whether immediately following school experience, or after further postsecondary study.

To assure these rights, preparation for employment must become a focal point of every student's educational program. This is especially true for students with disabilities. Congress recently underscored this outcome by amending the Individuals with Disabilities Education Act (IDEA: PL. 101-476) to include transition services requirements. This action serves as an impetus for schools to intensify their efforts to prepare students with disabilities for productive employment and other postschool adult living objectives. Required transition services are described in IDEA as:

> A coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other postschool adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

Several recent studies reinforce the need to strengthen the connection between education and employment. For example, a national longitudinal transition study of special education students found that enrollment in occupationally oriented vocational programs was significantly related to a lower likelihood of students with disabilities dropping out of school, and that youth who took vocational education during school or had work experience as part of their educational program were more likely to be employed after high school. Research supports the value of a functional skills approach to curriculum and training for students with disabilities. This involves teaching the skills needed to enhance independent adult living in community settings.

Vocational education has long been a preferred vehicle for preparing students with disabilities for productive employment. However, most of these programs in the past relied heavily on simulated work experience in classroom settings. This approach has not led to productive employment in integrated work environments for many students. In fact, the outcome often has been sheltered employment in segregated work settings. The skills acquired through classroom or simulated work experiences do not generalize to typical work settings, and therefore, do not meet the goal of postschool productive employment for students with disabilities. When vocational education and training occur primarily through classroom or simulated settings, students with disabilities do not acquire social skills normally built through interactions with colleagues and coworkers. These skills are critical to long term employment success.

The Community-based Vocational Education Approach to Productive Employment for Students with Disabilities

Shortcomings in the more traditional vocational education and training approaches have led to the development of community-based vocational education (CBVE). CBVE is a more effective approach to employment preparation for students with disabilities. CBVE delivers vocational education and training to students with disabilities in typical community work settings rather than in conventional school environments. Students aged 14 years or older engage in nonpaid vocational exploration, assessment, and training experiences to identify their career interests, assess their employment skills and training needs, and develop the skills and attitudes necessary for paid employment. After such instruction, students engage in cooperative vocational education experiences for which they are paid.

There are four distinct components to the CBVE approach: vocational exploration, vocational assessment, vocational training, and cooperative vocational education. Students often progress sequentially through all four components. However, some students participate in only one or two components before moving to cooperative vocational education, depending on their instructional needs.

Vocational Exploration

The ***vocational exploration*** component exposes students briefly to a variety of work settings to help them make decisions about future career directions or occupations. The exploration process involves investigating interests, values, beliefs, strengths and weaknesses in relation to the demands and other characteristics of work environments. Through vocational exploration, students gain information by watching work being performed, talking with employees, and actually trying out work under direct supervision of school personnel. Exploration enables students to make choices regarding career or occupational areas they wish to pursue. The student, parents, exploration site employees, and school personnel use this information to develop the student's IEPs for the remainder of the student's special education experience.

Vocational Assessment

The ***vocational assessment*** component helps determine individual training objectives for a student with a disability. In this CBVE component, the student undertakes work assignments in various business settings under the direct supervision of school personnel and employees. Assessment data are systematically collected concerning the student's interests, aptitudes, special needs, learning styles, work habits and behavior, personal and social skills, values and attitudes toward work, and work tolerance. The student rotates among various work settings corresponding to the student's range of employment preferences as situational assessments are completed by school personnel and assessment site employees. As a result, students select work settings in which they can best pursue career or occupational areas matching their interests and aptitudes. Future training objectives are matched with these selections. These training objectives become a part of the student's subsequent IEP.

Vocational Training

The ***vocational training*** component of CBVE places the student in various employment settings for work experiences. The student, parents, and school personnel develop a detailed, written training plan, which includes the competencies to be acquired, method(s) of instruction, and procedures for evaluating the training experience. Training is closely supervised by a representative of the school or a designated employee/supervisor. The purpose of this component is to enable students to develop the competencies and behavior needed to secure paid employment. As the student reaches the training objectives in a particular employment setting, the student moves to other employment environments where additional or related learning, or reinforcement of current competencies and behavior can occur.

Cooperative Vocational Education

Cooperative vocational education consists of an arrangement between the school and an employer in which each contributes to the student's education and employability in designated ways. The student is paid for work performed in the employment setting. The student may receive payment from the employer, from the school's cooperative vocational program, from another employment program operating in the community such as those supported by the Job Training Partnership Act, or a combination of these. The student is paid the same wage as nondisabled employees performing the same work. In some instances, arrangements are made by the school and employer through the Department of Labor Wage and Hour Division to pay a lower wage based on comparable performance. (See "The FLSA and the CBVE Cooperative Vocational Education Component" on page 6 of this section of the handbook for a brief description of these FLSA provisions).

The school and employer reach a written agreement before the student enters the cooperative vocational education component. This agreement includes a clear stipulation of the student's wages and benefits. This agreement may also include follow-along services to ensure the student adjusts to the work assignments and improves performance and productivity over time. Students may engage in more than one cooperative vocational education placement as part of their special education experience during school.

Requirements of the Fair Labor Standards Act (FLSA) Related to CBVE

Because CBVE activities take place in actual community employment settings, these activities must comply with the provisions of the Fair Labor Standards Act (FLSA). The FLSA is the federal legislation establishing minimum wage, overtime pay, recordkeeping requirements (i.e., personal employee information, wages, hours), and child labor. Employees are entitled to a regular wage of at least $4.25 per hour and overtime pay of at least one and one-half times their regular wage for all hours over forty in a work week. States commonly have labor laws which must be satisfied as well. Typically, the most stringent law applies.

The requirements of the FLSA come into effect only in an employment relationship. Prior to 1992, it was not entirely clear if students participating in work settings for the purposes of vocational training were considered employees under the FLSA. This ambiguity resulted in some schools becoming hesitant to set up or expand CBVE programs lest they and their employer partners appear to violate the FLSA.

Wishing to promote CBVE programs to prepare students with disabilities for productive, paid employment, the U.S. Departments of Labor and Education entered into an agreement in September 1992 and published new guidelines governing the participation of students with disabilities in employment settings for vocational exploration, assessment, and training. These Departments adopted the following *Statement of Principle:*

The FLSA and CBVE Vocational Exploration, Assessment, and Training Components

> The U.S. Departments of Labor and Education are committed to the continued development and implementation of individual education programs, in accordance with the Individuals with Disabilities Education Act (IDEA), that will facilitate the transition of students with disabilities from school to employment within their communities. This transition must take place under conditions that will not jeopardize the protections afforded by the Fair Labor Standards Act to program participants, employees, employers, or programs providing rehabilitation services to individuals with disabilities.

The Departments of Labor and Education joined this *Statement of Principle* with a set of guidelines. When schools and employers engaging in vocational exploration, assessment, and training activities with students with disabilities follow these guidelines they do not violate the provisions of the FLSA while effectively preparing students for successful employment.

According to these guidelines, students with disabilities who engage in vocational exploration, assessment, and training are *not* employees of the businesses in which they receive these services. Furthermore, schools and businesses that engage in CBVE activities related to vocational exploration, assessment, and training, and that meet certain criteria do *not* violate the provisions of the FLSA. These criteria are:

1. Participants will be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting.
2. Participation will be for vocational exploration, assessment, or training in a community-based placement worksite under the general supervision of public school personnel.
3. Community-based placements will be clearly defined components of individual education programs developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative vocational education components will be included in the students' Individualized Education Program (IEP).

4. Information contained in a student's IEP will not have to be made available; however, documentation as to the student's enrollment in the community-based placement program will be made available to the Departments of Labor and Education. The student and the parent or guardian of each student must be fully informed of the IEP and the community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the student-participant to wages.

5. The activities of the student at the community-based placement site do not result in an immediate advantage to the business. The Department of Labor will look at several factors.

   - There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.
   - The students are under continued and direct supervision by either representatives of the school or by employees of the business.
   - Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.
   - The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.

6. While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:

   Vocational exploration - 5 hours per job experienced

   Vocational assessment - 90 hours per job experienced

   Vocational training - 120 hours per job experienced

7. Students are not entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.

Schools and participating businesses are responsible for monitoring that all seven of these criteria are met. If any of these criteria is not met, an employment relationship will exist, and participating businesses can be held responsible for full compliance with the FLSA.

The FLSA and the CBVE Cooperative Vocational Education Component

In this CBVE component, the student with a disability is paid for work performed in the employment setting. Therefore, an employment relationship exists; the student is an employee and is entitled to the same wages as nondisabled employees performing the same tasks; schools and businesses are subject to all of the provisions of the FLSA, (i.e., minimum wage, overtime pay, recordkeeping requirements, and child labor). This is true whether the student is paid by the business, school, or third party, (e.g., JTPA).

The FLSA contains several provisions addressing employees who are students aged 14 and 15, students aged 16 years and older, or workers with disabilities. These provisions are described briefly as follows.

1. Students aged 14 and 15 years: Under the FLSA child labor provisions, these students may work in various jobs outside school hours no more than three hours on a school day with a limit of 18 hours in a school week, no more than eight hours on a nonschool day with a limit of 40 hours in a nonschool week, and not before 7:00 a.m. or after 7:00 p.m., except from June 1 through Labor Day, when the evening hour is extended to 9:00 p.m. These students may not work in jobs declared hazardous by the Secretary of Labor.

2. Students aged 16 and 17: Under the FLSA child labor provisions, these students may work any time for unlimited hours in all jobs not declared hazardous by the Secretary of Labor.

3. Student learners: Full-time students, aged 16 years and older and enrolled in vocational education, can be employed at a special minimum wage rate of not less than 75 percent of the minimum wage, (i.e., $3.19 under the present $4.25 per hour minimum wage), *provided* authority is obtained from the Department of Labor Regional Office of the Wage and Hour Division for each student before the students begin employment.

4. Trainees: The FLSA also provides for a training wage of $3.62 per hour, or 85 percent of the applicable minimum wage, whichever is greater, to be paid to most employees under 20 years of age for up to 90 days under certain conditions. Individuals may be employed at this training wage for a second 90-day period by a different employer if certain additional requirements are met. Individuals may not be employed at the training wage, in any number of jobs, for more than a total of 180 days. Employers may not displace regular employees to hire those eligible for the training wage.

5. Workers with disabilities in supported work programs: Section 14 of the FLSA allows workers with disabilities to be employed at wage rates that may be below the statutory minimum but must always be commensurate with the workers' productivity as compared to the productivity of nondisabled workers performing the same tasks. To pay a wage rate below the statutory minimum, an employer must have a certificate from the Regional Office of the Wage and Hour Division of the U.S. Department of Labor; the employer must obtain the certificate before employing a worker with a disability at less than the minimum wage.

Schools operating CBVE programs should not rely solely on the preceding description of the FLSA provisions that apply when students participate in the cooperative vocational education component of CBVE. Schools and businesses should consult their U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division Regional Offices for additional guidance. A list of these offices and contact persons is contained in Appendix A.

With the issuance of guidelines governing the CBVE components of vocational exploration, assessment, and training, the U.S. Departments of Labor and Education have cleared the way for schools to launch or expand their CBVE programs for students with disabilities. The guidelines are still new as they were issued in September 1992. Several state and local education agencies have contacted the Office of Special Education Programs within the U.S. Department of Education with questions about applying the guidelines to their own CBVE programs. The following section of the handbook lists the questions most frequently asked about operating CBVE programs consistent with the FLSA together with responses to these questions developed by the U.S. Departments of Education and Labor.

Section II

Questions and Answers

Questions and Answers

The U.S. Departments of Labor and Education issued new guidelines in September 1992, which apply to students with disabilities in nonemployment relationships. A nonemployment relationship occurs as part of the vocational exploration, assessment, and training components of CBVE programs. This section presents many of the questions frequently asked about these new guidelines. Each question includes an answer developed by the U.S. Department of Education in collaboration with officials from the U.S. Department of Labor's Wage and Hour Division.

Requirements for Participation

1. ***Which students may participate in community-based vocational education under these guidelines for non-employment relationships?***

   Students who meet state guidelines for special education may participate in community-based vocational education if it is determined appropriate for them.

2. ***How is it determined which students might need community-based vocational education?***

   The determination should be based on the individual student's needs taking into account the student's preferences and interests. Community-based vocational education would be considered a major change in placement for most students and would require a change in the IEP. The education agency must invite the student to any meetings considering transition services or participation in community-based vocational training.

3. ***Does the term "physical and mental disabilities" mean that students with learning disabilities are excluded?***

   No. Learning disabilities can have their origin in physical or mental disabilities. However, participation in community-based vocational education should not be determined by disability group but rather by individual needs and preferences.

4. ***The criteria in the guidelines indicate that community-based vocational education is for individuals for whom employment is "not immediately obtainable." What does this mean?***

   The "not immediately obtainable" language was placed in the criteria to ensure that students would not be placed in the exploration, assessment, or training components of community-based vocational education if they were capable of obtaining employment at or above the minimum wage level. Community-based vocational programs are organized educational activities intended to prepare students for paid employment while they are in school.

5. ***The criteria in the guidelines also indicate that community-based vocational education is intended for students who will need "intensive on-going support" to perform in a work setting. Does this mean that it is intended for students with more severe disabilities?***

   Community-based vocational education is intended for those students with more severe disabilities. However, the level of severity must be based on skills and behaviors necessary to function in a work setting. Examples of ongoing support services include job redesign, environmental adaptations, personal assistance services, transportation, and social skills training (Rehabilitation Act Amendments of 1992, Senate Report 102-357, p. 24).

6. ***What vocational options should be available to students whose needs wouldn't be considered severe?***

   Community-based vocational education is not intended to replace vocational education, work study, or other vocational training and employment programs. It is intended to be an option made available to students to expand the capacity of education agencies to assist each student to achieve employment objectives.

7. ***Can these guidelines apply to adults with disabilities who are utilizing vocational rehabilitation services?***

   The Departments of Education and Labor intended for these guidelines to be used only for youth with disabilities as defined by the Individuals with Disabilities Education Act. However, the U.S. Department of Labor and the National Rehabilitation Facilities Coalition have reached a similar agreement which would apply to adults with disabilities.

Documentation Issues

8. ***What type of documentation is needed?***

   It is important in community-based vocational education programs to document that all participants – the student, the parent or guardian, the employer, and instructional staff – understand that:

   1) If at any point the community-based vocational activity is no longer a learning experience, it can not be considered a nonemployment relationship;
   2) The community-based vocational program must meet all the requirements outlined in the guidelines for nonemployment relationships; and
   3) Students are not entitled to employment at the worksite where they are receiving instruction and training.

   Three types of documentation must be employed to meet the requirements of these guidelines: 1) an *IEP* reflecting vocational instruction and training goals and objectives relevant to the community-based vocational experience; 2) a *letter of agreement* outlining the DOL/ED requirements listed above and signed by all participants; and 3) *ongoing case notes* (i.e. attendance records, progress reports).

9. ***Does the IEP eliminate the need to adhere to other laws governing child labor?***

   Technically, child labor laws do not apply where there is not an employment relationship. However, it is highly recommended that educators adhere to child labor laws with regard to hazardous working conditions. Instruction and training in occupations which involve the use of machinery such as deli slicing machines, trash compactors, and bread dough kneading machines have been known to cause serious injury. Child labor laws provide guidance which can assist education personnel in determining whether a job is hazardous.

10. ***Do these guidelines from the U.S. Department of Labor supersede individual State Departments of Labor regulations?***

    No. It is important that community-based vocational education programs comply with both U.S. Department of Labor regulations and State Department of Labor regulations. Where the two do not agree, the regulations with the most stringent requirements for protecting individuals in work settings must apply.

11. ***Is special or extra liability coverage for students required?***

Community-based vocational education is considered part of the student's individualized education program. In nonemployment relationships, the worksite is perceived as an extension of the school. In other words, the student is pursuing instructional objectives in a work setting. Since these students are not employees, they are not eligible for the usual workman's compensation or insurance coverage provided to employees. If the student is a paid employee of the business, then the employer is responsible for offering him or her the same liability coverage offered to other employees. If the student's participation in workplace activity can be considered instructional and part of a nonemployment relationship, then the school may be responsible for liability coverage. Generally, the same insurance and liability policies which apply to other off-site school experiences (i.e. athletic events, field trips) should apply. Each school district must work out their own policies regarding liability.

12. ***Do reports have to be made to the U.S. Department of Labor and/or the U.S. Department of Education?***

No. It is not necessary to make reports to the U.S. Department of Labor or the U.S. Department of Education. However, adequate records documenting your programs' compliance with the criteria for nonemployment relationships must be maintained. In the event of a Department of Labor investigation of your program, this information must be made available to the Department of Labor.

13. ***Can we share information from the community-based vocational program with vocational rehabilitation agencies?***

Yes. Information from the CBVE program can be shared with other agencies as long as confidentiality procedures are followed.

14. ***How should issues regarding confidentiality be addressed?***

CBVE programs should follow those procedures typically followed with regard to confidential information. These procedures are outlined in section 300.560-300.576 of the IDEA regulations and are incorporated into both state and local policies and procedures.

Program Supervision

15. ***What is meant by the term "under the general supervision" of public school personnel?***

What this means is that the public school or education agency has primary responsibility for the community-based education program. Under IDEA, failure to deliver free appropriate educational services constitutes a violation of the rights of students with disabilities. This phrase places responsibility for ensuring that CBVE programs meet this mandate squarely on the shoulders of public school personnel. While different agencies or groups may deliver these educational services, public school personnel must act as the central agency overseeing the program.

16. ***How might educators document meeting the general supervision criteria?***

Educators can document the general supervision criteria by developing the student's IEP. If a third party, such as a community-based rehabilitation program, is being utilized to carry out the provisions of the IEP, it should be so noted. The education agency must ensure that these guidelines are fully understood and will be followed by the provider.

17. ***What are the implications of the "continued and direct supervision" requirement for educators and employers?***

Student participation in CBVE programs is considered as a valid part of a student's instructional program. As such, he or she is expected to be closely supervised by school staff or employees of the business. Direct supervision can include: 1) one-to-one instruction, 2) small group instruction, 3) supervision in close proximity, and 4) supervision in frequent, regular intervals. Supervision in frequent, regular intervals is permitted when the goal is to assess ability to work independently or to demonstrate mastery of the vocational skill.

18. ***Is it necessary for someone to monitor the student at all times?***

Students in CBVE programs are to be monitored at all times. However, exactly how closely a student needs to be monitored in a community-based work setting must be determined on an individual basis. The various components of CBVE could require a variety of monitoring strategies depending on the goals and objectives outlined in the IEP. For example, vocational exploration and vocational assessment may require closer monitoring than the training component when the student may be working towards more independence in job performance.

19. ***What educational qualifications and/or certificate must education staff have in order to provide supervision in CBVE programs as the education agency's representative?***

It is the responsibility of state and local education agencies to determine the qualifications necessary for education staff providing supervision in CBVE programs.

Instructional Programming

20. ***Would vocational assessment be required to determine a student's interests and preferences?***

A formal vocational assessment may not be required to ascertain a student's preferences and interests if other alternatives are appropriate. However, as part of the overall decision making process, needs for support services or assistive technology should also be identified. These needs may be determined through ongoing assessment procedures inherent in the various components of community-based vocational education.

21. ***Is it necessary that the program follow sequential order (i.e. exploration, assessment, training)?***

No. It is not necessary that the CBVE program follow a prescribed order. Given the nature of the student's needs, any of the three components may be deleted. It is only necessary that the CBVE program follow logical, generally agreed upon instructional best practices. For example, assessment and exploration usually would not follow training in one job classification.

22. ***Is it necessary that the vocational goals and objectives in the IEP specify exact site placements?***

No. It is possible for the IEP to identify only general goals and objectives to be pursued (i.e., job clusters to explore or conduct assessments in; assessments of general work behavior skills; training in a specific occupation). The IEP should, however, expressly limit the amount of time students will spend at any one site or in any one distinguishable job classification. Additional written agreements with parents, students, and employers should reflect the exact location and document the specific nature of the education and training involved.

23. ***Does the IEP team have to reconvene for multiple vocational explorations, assessments, and training?***

No. It is not generally necessary to reconvene the IEP team for multiple vocational explorations, assessments, and training. The vocational IEP objectives and goals can be written broadly enough to incorporate these experiences.

24. ***What is meant by the phrases "clearly distinguishable occupation" and "clearly distinguishable job classification"?***

The word "occupation" refers to a specific profession or vocation generally engaged in as a source of livelihood. Occupation and job classification are meant to be synonymous. Examples of occupations are shipping and receiving clerk, custodian, and painter. Often occupations are confused with specific work activities or work stations which may be integral components of specific occupations. For example, work as a building custodian involves sweeping, emptying trash, and mopping. Each of these work activities must be considered as part of the clearly distinguishable occupation of custodian. If a student has received all allowable hours of non-paid CBVE in the job of school custodian, she should not be moved to a new site for a separate experience as a non-paid office building custodian.

25. ***Given these guidelines, could an employer move students around to different work stations or occupational areas not specified in their written agreement?***

No. As stated earlier, goals and objectives for the student have been outlined in the IEP and written agreements between the student, parent, employer, and school personnel detail specific activities for the community vocational experience. Thus, the community-based vocational experience can be considered a valid educational experience under the supervision of school personnel. Employers must feel free to remove students from any work activity if they determine that removal is necessary for safety or other reasons. However, under no circumstances should the student be placed in a work station or occupational area not specifically outlined in the written agreement.

26. ***How will students receive academic credits for community-based education?***

How students receive academic credit for work done in CBVE programs is left to the discretion of state and local education agencies. Many education agencies allow course credit for these community experiences since they are the means by which students achieve vocational goals and objectives identified in their IEPs. Frequently, the policy for academic credit in CBVE programs will be consistent with the one used for vocational education programs available to the general population.

27. ***Do these guidelines refer to programs under special education and/or vocational education?***

It does not matter whether the CBVE program is offered through special education or vocational education. However, students participating in CBVE programs under these guidelines for nonemployment relationships must be youth with disabilities as defined by the Individuals with Disabilities Education Act.

28. ***Do these guidelines apply to work during the summer?***

Yes. These guidelines may apply to summer CBVE programs as long as they are under the general supervision of school personnel. Many students have individualized instructional programs that call for an extended-year educational program. Other students may simply elect to enroll in summer school.

The Educational Relationship vs. the Employment Relationship

29. ***What is the difference between an educational relationship and an employment relationship?***

In an employment relationship, the student is actually providing services that are of immediate benefit to the employer. The student may be completing assignments normally completed by regular employees. As a result of these activities, vacant paid positions in the business may remain unfilled and regular employees may be displaced or relieved of their normally assigned duties. In an educational relationship, the student engages in work activities as part of an organized educational activity designed to benefit the student. The guidelines on implementing CBVE programs consistent with the FLSA outline the criteria for making the distinction between an employment relationship and a valid educational experience. If it is determined that a student's involvement in community-based vocational education constitutes an employment relationship rather than part of an organized educational activity, then the participating business or school can be held responsible for full compliance with the FLSA regulations. This would include compliance with the FLSA's minimum wage and overtime pay provisions.

30. ***What is the distinction between benefit to student vs. benefit to employer?***

A number of distinctions have been made between benefit to the employer and benefit to the student with regard to CBVE programs (Pumpian, Lewis, & Engel, 1986). Benefit to the employer occurs when the employer recognizes an immediate advantage by having the CBVE student working on the premises. An immediate advantage can be described in terms of increased profitability or production for the business. Benefit to the student occurs when the CBVE program can be considered a valid educational experience for the student. The courts and experts in the field suggest that for CBVE to represent an educationally valid experience the following instructional practices should be implemented:

1) Students receive adequate orientation and instruction before performing new tasks.

2) The student's goals and objectives to be met in the community-based education program are clearly defined.

3) Activities in the community-based setting relate directly to student goals and objectives.

4) The student's activities in the CBVE program are closely monitored.

5) Records of the student's progress are maintained.

6) The necessary support and time for students to develop proficiency at new tasks are provided.

31. ***What is the educator's role in assuring that regular employees will not be displaced by the student trainee in the workplace?***

The community experience must be primarily for the benefit of the student. Also, regular employees must not be displaced or relieved of assigned duties and vacant positions should not go unfilled. Two strategies are available to educators for ensuring that this criterion is met. First, the educator can confirm that all parties – the employer, the student, and the parents – understand that students in the CBVE program must not displace regular employees. An agreement documenting this understanding should be signed by all involved. Secondly, those who provide direct supervision to the student at the worksite may observe when employee displacement and other violations are occurring and take steps to correct the situation.

32. ***If the activity is ordinarily not performed by employees and yet is beneficial to the business, can the student perform the activity?***

The student should either not perform the activity or be paid appropriate wages. Although regular employees have not been displaced or relieved of assigned duties, the student is still providing services which are of benefit to the business. Therefore, an employment relationship exists between the student and the employer. This would not be the case if the activity were of no benefit to the employer and consisted of "busy-work" designed to develop or improve a student's skills. For example, reorganizing materials awaiting shipment into sets of five would not constitute an employment relationship if the business did not ship the materials in this manner.

33. ***Can students accept an offer of paid employment at a worksite where they were placed for community-based education?***

Yes. Students may accept an offer of paid employment at a worksite where they received instruction and training. The student would then become an employee of the business and an employment relationship would ensue. This means that the employer is responsible for full compliance with the FLSA, including minimum wage and overtime pay provisions.

34. ***Could the student be paid less than the minimum wage?***

Yes. Employment below the minimum wage rate is permitted in instances when a worker's disabilities impair their ability to perform the job. This special minimum wage rate is based on the productivity of the worker with disabilities as compared to the productivity of a worker without disabilities. Employees must apply to the U.S. Department of Labor for authority to employ workers with disabilities at these special minimum wage rates.

Section III

Student Examples

Student Examples

This section describes the CBVE experiences of eight students with disabilities between the ages of 14 and 21. The student examples are grouped according to the CBVE component they illustrate. These components are: vocational exploration, vocational assessment, vocational training, and cooperative vocational education.

Each example includes a brief description of the student and his or her current special education program. The text pays particular attention to the CBVE planning activities, selection and preparations at the worksites, the student's experiences there, and the results. The examples include sample documents, (e.g., transition goals and objectives, letters to parents, CBVE agreements with worksites, and student assessment plans) whenever possible. Each example concludes with a comparison of the student's experience to the guidelines recently published by the U.S. Departments of Labor and Education and other requirements of the Fair Labor Standards Act.

The student examples are based on descriptions of actual students currently participating in CBVE programs. School personnel operating CBVE programs in the metropolitan Washington, D.C. area contributed this information and shared their experiences.

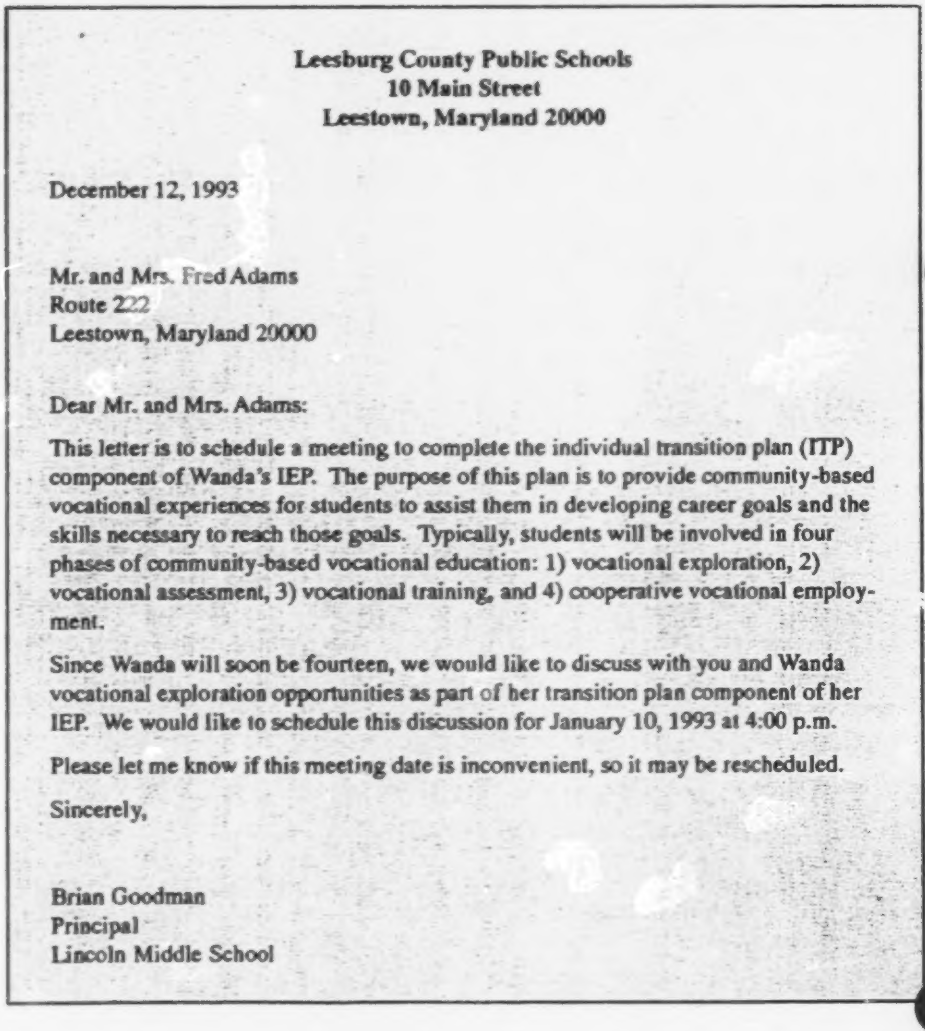
Example 1: Vocational Exploration in a Rural Community

Vocational Exploration by an Eighth Grader with a Learning Disability

Wanda is an eighth grader in a small rural community. She is 14 years old. She was identified as having a learning disability in the second grade and has received special education services since then. Wanda attends the local middle school where she is in regular classes and receives resource help in reading and language arts from a special education teacher.

An IEP meeting was held in the spring prior to Wanda's entry into eighth grade. Wanda and her parents attended the meeting. The teachers and parents agreed that Wanda was extremely sociable, was eager to try new things, and was increasingly self-reliant. The IEP goals were primarily in academic areas.

Wanda's parents expressed an interest in her developing some sense of jobs and careers she might pursue after high school. They believed this direction might motivate Wanda to study more seriously. Team members agreed that in five months (approximately the time Wanda would be 14) the team would reconvene to develop an individualized transition plan (ITP) component of her IEP.



Leesburg County Public Schools
10 Main Street
Leestown, Maryland 20000

December 12, 1993

Mr. and Mrs. Fred Adams
Route 222
Leestown, Maryland 20000

Dear Mr. and Mrs. Adams:

This letter is to schedule a meeting to complete the individual transition plan (ITP) component of Wanda's IEP. The purpose of this plan is to provide community-based vocational experiences for students to assist them in developing career goals and the skills necessary to reach those goals. Typically, students will be involved in four phases of community-based vocational education: 1) vocational exploration, 2) vocational assessment, 3) vocational training, and 4) cooperative vocational employment.

Since Wanda will soon be fourteen, we would like to discuss with you and Wanda vocational exploration opportunities as part of her transition plan component of her IEP. We would like to schedule this discussion for January 10, 1993 at 4:00 p.m.

Please let me know if this meeting date is inconvenient, so it may be rescheduled.

Sincerely,

Brian Goodman
Principal
Lincoln Middle School

The Transition Component of Wanda's IEP

Wanda and her parents participated in the development of the ITP component of Wanda's IEP. Neither Wanda nor her parents had any specific careers in mind when they came to the meeting. Wanda volunteered that she was interested in animals, music, children, and "drawing." Wanda's parents said that Wanda does chores around the house, and follows 3-4 part instructions easily. Although she often had to be reminded to do her work, her parents believed she could perform the tasks; she simply had other things that she wanted to do. Wanda's father is a soft-drink distributor to small stores in the area. One of Wanda's jobs at home is sorting empty bottles. Her dad noticed that she became much quicker and more proficient at this task when he began to pay her a penny a bottle.

The team decided that Wanda should experience a variety of job opportunities and situations during the remainder of the school year. These explorations would help Wanda identify some career areas she might pursue after graduating from school.

Transition Goals

- Wanda will explore a variety of school-based and community-based career opportunities through observation, conversation, and limited participation.
- Wanda will be a participant in subsequent IEP meetings and will express clear preferences based on her vocational exploration experiences.

Transition Objectives

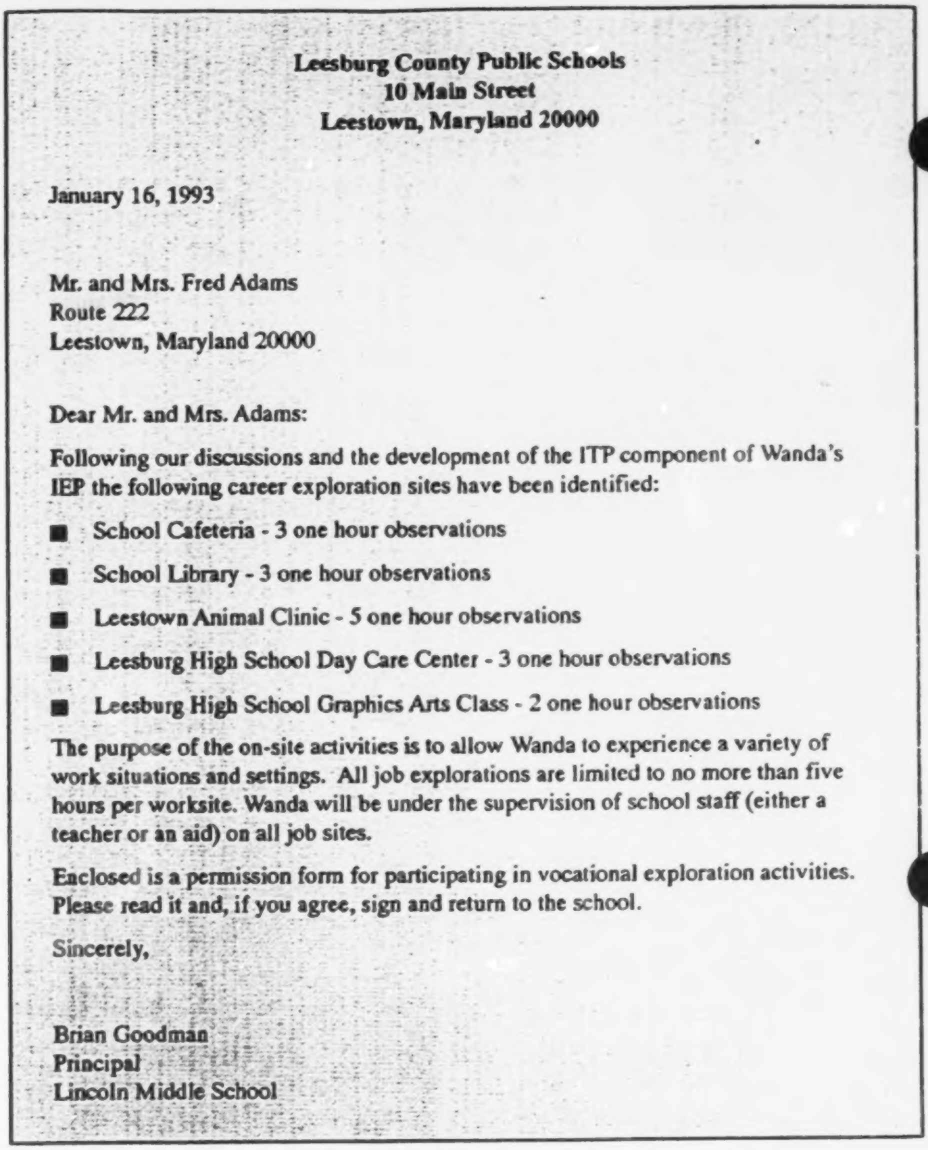
Wanda will:

- Express preferences as she is introduced to a variety of career situations and settings.
- Greet workers and supervisors and carry on appropriate conversations.
- Ask questions about the work in each situation or exploration site.
- Keep a log of each exploration experience and discuss each experience with her special education teacher and parents.
- Participate in the school's annual career day.

Exploratory Site Selection

The school staff suggested that the first experiences be at the school in the library and cafeteria. Both Wanda and her parents were hesitant about the cafeteria assignment. Wanda commented, "I already know how to wash dishes." Her teacher suggested there were other areas of food preparation that could be of interest. The team reached a compromise when the staff agreed to arrange with the local veterinarian for Wanda to observe in her office. Wanda would also have the opportunity to observe in the day care center and vocational education classes at the local high school.

Wanda's special education teacher agreed to coordinate Wanda's vocational exploration activities under her ITP/IEP. This includes arranging for: Wanda's visits to the various school and community sites, documenting Wanda's experiences, and gathering data from each site manager regarding Wanda's reaction to her exploratory observations. The school would provide all necessary transportation to the community-based sites since Wanda's parents commute to work in other communities.



Leesburg County Public Schools
10 Main Street
Leestown, Maryland 20000

January 16, 1993

Mr. and Mrs. Fred Adams
Route 222
Leestown, Maryland 20000

Dear Mr. and Mrs. Adams:

Following our discussions and the development of the ITP component of Wanda's IEP the following career exploration sites have been identified:

- School Cafeteria - 3 one hour observations
- School Library - 3 one hour observations
- Leestown Animal Clinic - 5 one hour observations
- Leesburg High School Day Care Center - 3 one hour observations
- Leesburg High School Graphics Arts Class - 2 one hour observations

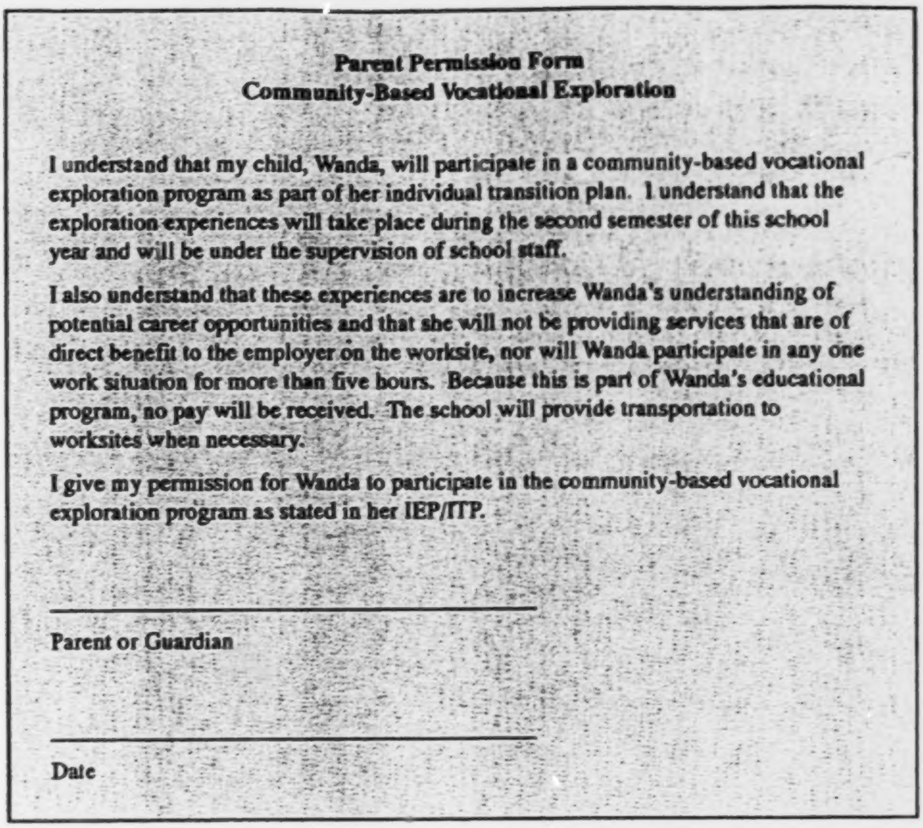
The purpose of the on-site activities is to allow Wanda to experience a variety of work situations and settings. All job explorations are limited to no more than five hours per worksite. Wanda will be under the supervision of school staff (either a teacher or an aid) on all job sites.

Enclosed is a permission form for participating in vocational exploration activities. Please read it and, if you agree, sign and return to the school.

Sincerely,

Brian Goodman
Principal
Lincoln Middle School

The parents understood that each of these explorations was limited to a maximum of five hours per experience. No pay would be received for any work performed. The purpose of the exploration was to expand Wanda's understanding of a variety of occupational areas. Her parents agreed to check that Wanda was keeping a log of her activities and to discuss her observations with her throughout her exploration activities.



Parent Permission Form
Community-Based Vocational Exploration

I understand that my child, Wanda, will participate in a community-based vocational exploration program as part of her individual transition plan. I understand that the exploration experiences will take place during the second semester of this school year and will be under the supervision of school staff.

I also understand that these experiences are to increase Wanda's understanding of potential career opportunities and that she will not be providing services that are of direct benefit to the employer on the worksite, nor will Wanda participate in any one work situation for more than five hours. Because this is part of Wanda's educational program, no pay will be received. The school will provide transportation to worksites when necessary.

I give my permission for Wanda to participate in the community-based vocational exploration program as stated in her IEP/ITP.

____

Parent or Guardian

____

Date

The School Cafeteria

Wanda's teacher introduced her to the manager of the school cafeteria. Wanda observed the general operations of the cafeteria for one hour and asked questions about different phases of the operations. Wanda was most curious about how the cooks knew how much of each ingredient to use in making large portions. She said she did not want to serve food in the cafeteria and have kids ask why she was doing it. During Wanda's second visit she watched a cook making meatballs and spaghetti. She asked a few questions, but seemed generally uninterested. She confirmed this with the manager, her teacher and her parents. During her third exploratory visit, Wanda measured and mixed the ingredients for "tuna surprise." She required some assistance in measures (pints, quarts, gallons, etc.).

Wanda's teacher observed her often. She noted that Wanda got along well with the cafeteria staff and seemed more interested in socializing than in cooking. Wanda recorded her experiences and reactions in her log and discussed them with her teacher and parents.

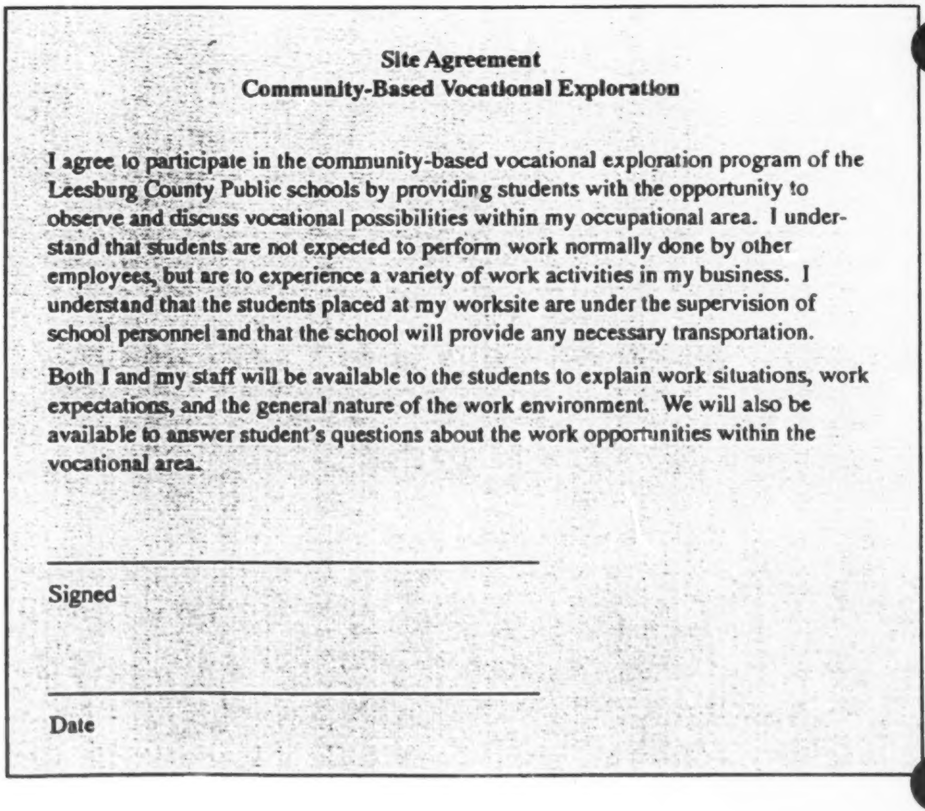
The School Library

Wanda introduced herself to the school librarian. He explained how a library is organized and operated. Wanda showed some interest in the library because of her interest in photography. She was pleased to find that the library had a photography section and several magazines. Wanda's next visit was spent watching the librarian and the library assistant do a variety of tasks: cataloging books, replacing books on the shelf, and checking books in and out. Wanda asked very few questions about this work. The librarian told the teacher Wanda was much more interested in leafing through magazines than participating in library activities.

On her next visit to the library, Wanda shelved 20 books after arranging them in alphabetical order by author. Both the librarian and her special education teacher noticed that she did this with little difficulty. During Wanda's exit interview with the librarian she expressed little interest in trying other library tasks. She did become somewhat excited when the librarian told her that one of his jobs was ordering books and magazines. She was less excited when she found out that the librarian couldn't just order books that he liked. Wanda made notes about her experiences in her log. In a follow-up discussion with her teacher Wanda reported that working in school didn't seem like real work. She wanted to see some real work.

The Vet's Office

Wanda's special education teacher arranged for Wanda to spend five afternoons with the local veterinarian in her office. Wanda's teacher explained the purposes of these visits to the vet and the vet agreed to expose Wanda to several experiences.



Site Agreement
Community-Based Vocational Exploration

I agree to participate in the community-based vocational exploration program of the Leesburg County Public schools by providing students with the opportunity to observe and discuss vocational possibilities within my occupational area. I understand that students are not expected to perform work normally done by other employees, but are to experience a variety of work activities in my business. I understand that the students placed at my worksite are under the supervision of school personnel and that the school will provide any necessary transportation.

Both I and my staff will be available to the students to explain work situations, work expectations, and the general nature of the work environment. We will also be available to answer student's questions about the work opportunities within the vocational area.

____

Signed

____

Date

Wanda was driven to the vet's office by a school aide. The aide stayed with Wanda during the first observation. On this visit, the vet's assistant took Wanda on a tour of the office and explained the different operations (standard veterinary services, surgery, grooming, and boarding). The assistant also explained that the vet was a large and small animal doctor and was often out of the office on house calls. Wanda was most interested in grooming and caring for the animals.

Wanda watched dog grooming during her second visit. The vet also had Wanda come into an examining room to observe a routine checkup of a cat. Wanda asked if the shots hurt the cat. Wanda and the vet had a long conversation about administering drugs to animals.

When the aide came to pick up Wanda after her third observation, she found Wanda cleaning dog cages. The aide learned that the vet was on a house call and the assistant instructed Wanda to clean the cages. Wanda didn't seem to mind. But, when the aide reported this to the teacher, the teacher telephoned the vet to explain that cleaning the cages was not an appropriate activity for Wanda. The vet agreed. On Wanda's last observation she and the aide accompanied the vet on a house call to examine a horse. Wanda was afraid of the big animal. Wanda reported her experiences and observations in her log. She thought it was "fun" to be around the dogs and cats, but didn't think she wanted to be a vet or a vet's assistant. She did express interest in how animals are trained.

The Day Care Center

Wanda spent three mornings in the day care center operated by the high school. The center cares for the children of high school students and other young children in the community. During the first visit, Wanda observed a structured play activity with the four and five year olds. On the second observation, Wanda participated in a play activity by handing out materials and helping children put on their smocks. The preschool teacher reported that Wanda seemed to like the older children, but was uncomfortable around the infants. She had no interest in changing diapers. On Wanda's last visit to the day care center she lost interest and spent her time playing with a group of toddlers having a tea party. Wanda reported in her log that she liked most of the children and wondered if a job like that paid very much.

Vocational Education in Graphics Arts

Leesburg High School offers a range of vocational education programs. One of these is a three-year program in graphics arts. Wanda spent two afternoons observing the activities in this general vocational education program. At first she watched students selecting color combinations to highlight a magazine ad. Then, at the teacher's invitation, she joined a small group choosing color combinations. Wanda reported in her log that she enjoyed the activity and believed she was good at picking the colors. The graphics arts teacher told Wanda's middle school teacher that Wanda has no trouble working with the general education high school students.

Career Day

Wanda and her mother attended the career day sponsored by the Rotary Club at her middle school. Since Wanda lives in a rural community, many exhibits involved agricultural and small businesses. Wanda spent some time talking with the owner of a one hour film development shop that had just opened in a nearby community. She told her parents she wanted to see the shop and find out more about how it worked.

Her mother telephoned the shop owner and took Wanda to watch the business for a Saturday afternoon. Wanda was quite excited by her conversation with the owner, and asked him several questions. Wanda's mother told her teacher that Wanda talked about this visit for some days. Wanda also asked her mother if she could continue to "work like this" when she entered high school next year.

Documentation

Wanda's special education teacher gathered written comments or made notes when talking with each of the exploration site managers. She and the aide kept notes on their observations of Wanda during these activities. The teacher also talked several times with Wanda's parents. At the end of the school year, the teacher wrote a summary of Wanda's vocational exploratory experiences pointing out Wanda's career preferences, (e.g., child care and photography), her responsible behavior at the worksites, and her potential to continue in a community-based vocation program in high school.

Wanda's Vocational Exploration Experiences and the FLSA

Wanda's participation in the vocational exploration component of CBVE conforms to the guidelines published by the U.S. Departments of Labor and Education. In this instance, she observed work settings in school as well as in the community. She had the opportunity to watch and participate in work in sites exhibiting a variety of career and occupational areas (i.e., food service, library science, veterinary science, child care, graphics arts, and photography). However, she received no pay for any service she might have performed. She spent no more than five hours at any one exploratory site. Nor did her participation in work at any site result in an immediate advantage to the business. Her teacher was alert in contacting the vet when the aide reported Wanda was cleaning dog cages. This activity was not carried out under supervision; it had the potential to benefit the business and therefore violate the guidelines for vocational exploration had it continued.

Wanda's interests and preferences were considered in selecting her exploratory experiences. Her parents were fully informed and participated in the activity. The exploration goals and objectives were clearly established as part of Wanda's transition component of her IEP. Wanda's special education teacher, the teacher's aide, and site managers supervised her assignments. It was not necessary to supervise Wanda directly at all times given her behavior, proficiencies, and IEP goals and objectives. Written notes, including Wanda's log, provided adequate case documentation.

There is the strong potential for the results of Wanda's vocational exploration experiences to influence the development of Wanda's IEPs during her high school years. Of particular interest is Wanda's opportunity to enroll in one of the general vocational education programs at Leesburg High School as part of her high school special education program. CBVE is not intended to substitute for or narrow the range of vocational opportunities available to students with disabilities. It is another alternative available to school personnel concerned with preparing students for successful employment following school. For students of middle school age, regardless of the severity of their disability, CBVE is an excellent vehicle through which to begin career development activities. General vocational education in high school is definitely a viable alternative for many students with disabilities.

Example 2: Vocational Assessment in a Cleaning Services Company

Vocational Assessment for a Teenager with a Moderate Disability

Mike is 16 years old and attends a large suburban high school. Mike has a moderate disability and has received special education and related services since he was four years old. A substantial part of his education program now centers on community referenced instruction.

His IEP goals focus on functional community skills, social skills, and work-related skills. According to the IEP, Mike speaks in short sentences of three to five words and often his diction is unclear. He has difficulty following directions with more than two steps. Mike reads sight words related to his daily schedule. Mike is typically outgoing, but has difficulty adapting to new routines.

Mike's Previous CBVE Experiences

Mike has participated in several vocational exploratory experiences since he entered high school last year. They included observations and limited participation in a bakery, a fast food restaurant, a large grocery store, a dry cleaners, and a home cleaning service. Mike's community-based special education teacher observed Mike in each of his exploratory experiences.

The Transition Component of Mike's IEP

An IEP meeting was held to review Mike's academic and transition goals and objectives. Mike had not attended prior IEP meetings, but he and his father attended this meeting.Mike's previous IEPs did not include a transition component. The team developed a long-term transition goal for Mike that stated he would secure employment within the community upon graduation from high school.

During the meeting, Mike expressed interest in the home cleaning company that he observed as part of his CBVE exploration activities. He liked the way the company organized employees into three-person teams and assigned teams to residential and commercial customers who subscribe to the cleaning service. Mike's community-based special education teacher knew that the cleaning company had provided assessment and training opportunities to several students in the past. It would be a positive work setting because Mike could try a variety of jobs within the same business setting.

Transition Goal:

- Mike will experience a variety of residential and commercial cleaning tasks in a community setting, two hours per day, three days per week during this school year.

Transition Ojectives

Mike will:

- Relate well to his supervisor and co-workers.
- Follow oral directions and written directions.
- Perform a variety of cleaning tasks, such as operating a vacuum, washing windows, clearning restrooms, dusting, emptying trash.

The team decided in the meeting that Mike's community-based teacher would seek the company's permission to construct a vocational assessment situation for Mike during this school year. Based on this possibility, the team developed an annual transition goal and a set of objectives for Mike.

Arrangements for Mike's Vocational Assessment at Eaglewood Cleaning Services

Mike's community-based teacher met with the owner of Eaglewood Cleaning Services, Inc. and discussed the possibility of it serving as Mike's vocational assessment site. The owner remembered Mike spending time watching one of his employee teams work during the past school year. The teacher explained that the purpose of Mike's vocational assessment was to evaluate him in a variety of work-related areas including performance, ability to follow directions, and social relationships. The owner agreed. Since all of the cleaning services provided by the company to corporate clients were performed at night, the owner suggested assigning Mike to a team that cleaned private homes during the day. The owner also suggested assigning Mike to one team at first so he wouldn't have to adjust to several employees at once. The community-based teacher promised that he or an aide would accompany Mike to the worksite, and remain there with him.

The Development of Mike's Vocational Assessment Plan

The community-based teacher visited several of the company's worksites and met the teams and supervisors before Mike began his vocational assessment activities. Mike went with his teacher twice to confirm he was interested in this assessment placement. The teacher also conducted a worksite analysis to decide if Mike would need any type of assistance to perform the assigned tasks. He decided Mike wouldn't require any assistance other than transportation, which would be provided by the community-based teacher or the aide accompanying Mike to work.

The owner and Mike's teacher chose a residential cleaning team and supervisor for Mike based on the teacher's observations during the worksite analysis. Then Mike's teacher developed work-related and social behavior analysis instruments with which to assess Mike's job performance. These forms addressed each of Mike's transition objectives: work performance, ability to follow directions, and social relationships.

The supervisor, Mike's teacher, and the aide met to review the assessment plan. They agreed that they would collect data on Mike's work rate on each task, (e.g., cleaning windows, vacuuming). Mike would be expected to perform the task just as well as co-workers, although he might need more time or closer supervision. They also agreed to monitor Mike's attendance, attitude, willingness to follow directions, and interactions with co-workers. The aide would write task checklists for Mike to follow when working, and the supervisor would reinforce these with verbal instructions.

Assessment data would be collected each time Mike was at the worksite, at least at first. The teacher and aide would write case notes appraising Mike's performance and behavior to supplement the data collected using the forms. The assessment process would entail collecting data on a task or behavior, meeting with Mike to review his performance, then reassessing his performance. Assessment would then focus on a new task or behavior.

Mike's teacher obtained agreement to the assessment plan from Mike's father and the owner of the cleaning company.

Eaglewood Community School District
1716 Downstone Road
Eaglewood, Illinois 20747

November 10, 1993

Vocational Assessment Plan for Mike Pendleton

Mike Pendleton will participate in the vocational assessment component of the Eaglewood Community School District Community-based Vocational Education Program during this 1993-1994 school year. Mike's participation is consistent with the transition goal and objectives included in his Individualized Education Plan (See attached). The purpose of the vocational assessment component is to identify training goals and objectives Mike must meet in order for him to secure employment within our community upon his graduation from Eaglewood High School.

Eaglewood Cleaning Services, Inc. will be the vocational assessment site. This site was chosen based on Mike's interest in cleaning services as a result of his previous vocational exploration experiences. Mike will work with one of the company's residential cleaning teams for two hours a day, three days each week. Mike's work with the company in any one setting will not exceed 90 hours. Mike will not be paid for work he performs in this placement. Vocational assessment is part of Mike's special education program. Mike's placement is not intended to benefit the business of Eaglewood Cleaning Services, and the company does not expect to receive any business benefit as a result of Mike's participation.

Transportation to and from Eaglewood Cleaning Services worksites will be provided by school personnel. Mike will be assigned to one or more commercial and residential cleaning teams. He will work under the direction of the team supervisor. School personnel will be with Mike at all times to provide direction and assess Mike's performance. Mike will perform a variety of cleaning tasks under supervision. For each task, data will be collected on Mike's work performance, ability to follow verbal and written directions, and ability to interact appropriately with co-workers and supervisors. These data will be collected by school personnel and team supervisors. Mike and his father will receive frequent reports on his performance.

This arrangement can be stopped by Mike, his father, school personnel, or Eaglewood Cleaning Services if Mike's participation is not acceptable to all parties, or the assessment process is complete. In this instance, the school will make every effort to identify an alternative vocational assessment site for Mike.

Signed and dated:

____

Edward Sturgeon, Principal
Eaglewood High School

____

Ralph Goodwin, Owner
Eaglewood Cleaning Services

____

Robert Pendleton

Mike's Experience at Eaglewood Cleaning Services

Mike participated as planned in his vocational assessment placement with Eaglewood Cleaning Services. He enjoyed the work, although he was hesitant to talk to co-workers initially. Mike's teacher and aide encouraged him to talk by starting conversations and drawing Mike into the discussions. When the teacher or aide drove Mike between worksites, Mike asked "to ride in the van." He missed the opportunity to talk with his co-workers informally.

Mike had difficulty following verbal directions. He relied heavily on the written task check lists. The supervisor found that he needed to show Mike how to do each task at least twice before Mike could tackle it himself. Co-workers later offered this assistance as part of their routine. Both the teacher and the supervisor observed that Mike wasn't good at asking for help when he didn't understand a direction or task. He just stood to the side until someone noticed he wasn't working. But, once Mike understood the task, he performed it efficiently and well. Mike didn't like moving from house to house. It took over a month to make Mike comfortable with this. And, when the schedule changed, Mike still had trouble adjusting.

After two months with the team, both Mike's teacher and the supervisor believed the assessment was complete. Mike wanted to keep working. The supervisor talked to one of his colleagues, and arranged for Mike to join another team. Mike protested: "I want to stay here!" His father and teacher told Mike that people often change jobs, and getting to know new situations was just a fact of working. Mike reluctantly agreed to move to a second team. This gave the teacher the opportunity to assess Mike again with respect to his ability to enter new situations, establish relationships, and respond appropriately to different supervisors. The assessment process was repeated with similar results.

The Outcomes of Mike's Vocational Assessment

The vocational assessment showed that Mike has the potential to work on a cleaning services team. He can do the work, probably at productivity levels comparable to those of employees without a disability. However, he needs to improve his ability to follow oral directions and ask for help when he doesn't understand something. He needs to become more comfortable with changes in schedules and routines. Mike still needs experience and support in talking and interacting with co-workers.

Mike's Vocational Assessment Experiences and the FLSA

Mike seemed to profit from his vocational assessment experience. The experience provided his teacher with the information necessary to develop training objectives for Mike's next CBVE activity. This assessment was conducted according to the FLSA guidelines. Eaglewood Cleaning Services was selected as the vocational assessment site based on Mike's interests and the goals and objectives of his IEP. The agreement plan was clear that Mike was entitled to no pay, and that Eaglewood would receive no benefit from Mike's participation. Assessment data were collected systematically by school personnel and Eaglewood staff. Mike spent less than 90 hours at Eaglewood during the school year.

In general the school was diligent in its supervisory responsibilities. However, Mike's riding in the van without the appropriate permissions might have presented a liability for the school system, since school liability requirements vary. Yet, opportunities for students to interact informally with employees is a valuable component of their CBVE experience, and school personnel should explore ways in which these opportunities can be fostered. In instances such as Mike's, maybe the school could have arranged for the aide to ride in the van with Mike. He could have had the opportunity to converse informally with employees, which was part of his assessment plan, and not infringe on the school's liability requirements.

This CBVE component requires that when all possible information about the student's training needs has been collected, it's time to move the student to a work situation in which new information can be obtained. Mike's teacher was correct to move him to another team when the teacher and supervisor believed the initial asessment data collection process was complete. However, more data were needed on Mike's abilities to enter new situations and establish positive peer and supervisory relationships. Since Mike had not spent 90 hours at the Eaglewood Cleaning Services site, and more assessment data could be obtained there, it was appropriate he join a second team for this purpose.

Example 3: Vocational Training in a Hotel Laundry

Vocational Training for a Seventeen-Year-Old with a Severe Disability

Marilyn is 17 years old and has a severe disability. While she is ambulatory, health related problems do not allow her to walk great distances. Marilyn attends an urban high school where she spends most of her school day in regular classrooms. She and her teachers receive consultative assistance from the special education and related services staff. Marilyn speaks in single syllable words and rarely uses whole sentences. Her receptive vocabulary, however, is much greater than her expressive vocabulary and she can follow two step directions. Marilyn knows some sign language and recognizes picture symbols on a daily schedule board that she uses.

During the past two years, Marilyn's program has placed heavy emphasis on community referenced instruction. She can buy groceries and other items using a picture board. Marilyn is much more comfortable about being in public places than in the past. Marilyn's current IEP concentrates on functional skills, including self-care and hygiene, sexuality, and social skills.

Marilyn's Previous CBVE Experiences

Marilyn's previous IEPs called for a variety of community-based experiences, including sorting materials for recycling, custodial work in a community center, and laundry service in a downtown hotel. The laundry facility in the Brentwood Inn was selected as the site in which a comprehensive vocational assessment was completed under the supervision of Marilyn's job coach.

The Transition Component of Marilyn's IEP

Although Marilyn has been present in past IEP meetings, the last meeting was the first in which she expressed a clear preference for work in laundry service. The job coach's assessment of job performance and Marilyn's general attitude during the assessment phase reinforced Marilyn's choice for training in laundry service in a hotel operation.

Marilyn's IEP transition component reflected the outcomes of the assessment and the recommendations of the job coach.

Specific objectives included:

- **Marilyn will increase her rate in both sorting and folding laundry.**
- **Marilyn will learn how to load washers, add detergent, unload washers and place items in the dryer.**
- **Marilyn will develop appropriate break behavior including use of snack machine, conversations with employees, and use of restroom during break time.**
- **Marilyn will adapt to changes in the work routine.**

183

During the assessment phase, the job coach found that Marilyn could perform two basic tasks: sorting soiled laundry and folding clean laundry. In sorting, Marilyn worked at approximately 40 percent of the rate of regular employees. Her work rate was 20 percent of the rate of regular employees in folding laundry. The job coach also noted that Marilyn did not like her routine changed. If she had been sorting for several days, she resisted switching tasks to folding. She also had trouble dealing with a different supervisor if her regular supervisor was ill or had a day off. The job coach suggested that Marilyn receive instruction in how to take a break on the job site and interact with other employees.

Marilyn's parents understood that her training would be no longer than three hours per day, three days a week, and would not exceed 120 hours. The parents agreed with this decision, but requested that they see the job site and speak with Marilyn's on-site supervisor. After talking with the Housekeeping Manager of the Brentwood Inn, they were pleased.

Ridgewell City Public Schools
110 N. Front Street
Ridgewell, North Carolina 22224

Community-Based Vocational Training Agreement for Marilyn Kline

As part of Marilyn's special education vocational training program, she will participate in employment training activities in the Brentwood Inn laundry. It is understood that:

- **Marilyn's training will be three hours per day, three days a week, and will not exceed 120 total hours;**
- **Her training is for her benefit according to her the Individual Education Plan;**
- **The school is responsible for the general supervision of the training program;**
- **Marilyn will not replace any hotel employee, but she may work under their close supervision;**
- **The Brentwood Inn will receive no immediate advantage from the tasks that Marilyn performs;**
- **When Marilyn is performing a task at an acceptable rate to her school and hotel supervisors, a new training task will be introduced;**
- **Marilyn is not entitled to wages or other work related benefits while in the training program;**
- **Marilyn is not necessarily entitled to employment with The Brentwood Inn when the training period ends.**

Date: **School Official:**

Marilyn Kline: **The Brentwood Inn:**

Mr. and Mrs. Gilbert Kline:

The school would provide transportation to the Brentwood Inn and the job coach or an aide would be on-site at least three days a week. When the job coach or aide was not at the worksite, Marilyn would report to the laundry supervisor and receive her training from him and another employee designated as Marilyn's "buddy". There would also be three other students being trained at the Brentwood Inn, one in laundry service and two in general housekeeping. The parents of two of these students offered to car pool and drive all of the students home at the end of work.

Marilyn's Vocational Training at The Brentwood Inn

The job coach shared the transition component of Marilyn's IEP and her vocational training with the laundry supervisor and Marilyn's buddy. The plan called for the job coach to be on-site during the initiation of new or expanded tasks and provide assistance to the supervisor on specific strategies and techniques. Marilyn's job coach wrote an agreement outlining the purposes of Marilyn's vocational training and the expectations for both the Brentwood Inn and the school system. Both the hotel management and Marilyn's parents accepted the agreement.

Ridgewell City Public Schools
110 N. Front Street
Ridgewell, North Carolina 22224

Initial Training Plan for Marilyn Kline

Sorting Laundry:

Marilyn will increase her work rate to 75% of the rate of hotel employees.

Initial training in sorting activities will be conducted by the job coach or aide. The training will consist of drill and practice activities to increase Marilyn's rate. Marilyn will receive continual feedback.

The job coach or aide will maintain data on Marilyn's rate, duration of rate, interrupting factors, and time of day. When Marilyn maintains a rate of 50% of a hotel employee, supervision will be switched to the laundry supervisor and "buddy." The job coach or aide will observe the interactions between Marilyn and her supervisor/buddy. When appropriate, training responsibility will be turned over to the supervisor and "buddy." Weekly meetings with the supervisor or "buddy" and the job coach or aid will be conducted to review Marilyn's progress. The job coach or aide will maintain records of these conferences and the observations provided by the supervisor and "buddy."

When Marilyn attains a work rate of 75% (or the job coach and laundry supervisor decide that Marilyn has attained her maximum rate), a new training activity will begin.

Work Breaks:

Marilyn's job coach or supervisor will accompany her on breaks. The job coach or aide will introduce Marilyn to her co-workers and assist in initiating conversation with hotel employees. Marilyn will also receive instruction in the use of snack machines. Marilyn will be encouraged to use the rest room during her breaks. Anecdotal records will be kept during the initial break periods. When it is determined that Marilyn's "break behavior" is appropriate, the job coach or aide will withdraw and Marilyn will take breaks with her "buddy" and/or other hotel employees. The job coach or aide will continue to collect data on an intermittent basis and review Marilyn' behavior in the weekly meetings.

Marilyn began her vocational training at the beginning of the second semester. At first Marilyn was confused because the Brentwood Inn was not the hotel where her vocational assessment had taken place. The job coach stayed with Marilyn and her schoolmates during the first week and established the desired training programs and data collection instruments. During the second week the aide stayed on-site.

By the end of the second week, the job coach and the supervisor concurred that Marilyn could work independently under the direction of the laundry supervisor until new tasks were introduced. Because Marilyn was in a training program, the supervisor would collect the same data on Marilyn's performance that the job coach collected. The job coach would work with the supervisor in collecting data and giving Marilyn feedback for a week. Then the supervisor would take over these responsibilities. The job coach, supervisor, and Marilyn would have a conference each week to discuss Marilyn's progress and decide when new training activities would be initiated.

During Marilyn's initial training in sorting laundry, both the job coach and supervisor saw that Marilyn's rate declined after the first work hour. The job coached suggested that fatigue may be a factor. The laundry supervisor arranged for Marilyn to work at a large table with a stool. This not only sustained Marilyn's work the rate but improved it. Marilyn also had trouble during breaks. She needed to be prompted to take a break, and was reluctant to begin talking with other employees, even her buddy. The job coach noticed that when Marilyn took a break with another student in the training program, Marilyn not only interacted with her schoolmate but with hotel employees as well. The laundry supervisor changed the break schedule so that Marilyn and her friend had breaks together.

The job coach and supervisor recorded Marilyn's job performance. She observed her at least three times a week and documented all observations. She had weekly discussions with the "buddy" to discuss behavior and performance. When the coach, the supervisor and buddy agreed that Marilyn was performing a task at criteria, Marilyn was placed in another training situation. The job coach or an aide was present each time Marilyn was introduced to a new task. Periodically Marilyn performed tasks in which she had previous training to measure her degree of retention.

The job coach also had weekly discussions with Marilyn's parents. The coach reported progress and areas in which Marilyn needed improvement. The job coach asked the parents to help by providing Marilyn with more situations in which she could make decisions (e.g., helping plan dinner, selecting her clothes.) She felt this would be beneficial to Marilyn on the job because Marilyn had difficulty making decisions, particularly how to use break time. The parents reported that they could see measurable differences in Marilyn, particularly in grooming when she was going to the training site.

The job coach, the aide, Marilyn, her parents, the supervisor, and "buddy" met at the conclusion of Marilyn's vocational training experience. The job coach and laundry staff reported that Marilyn was productive and meeting the established criteria. The "buddy" said that Marilyn was now comfortable with hotel employees and initiated conversations on occasion. Marilyn's greatest difficulty remained switching assignments, even when she had previously shown that she could perform the new task. The training team decided Marilyn should be given symbol cards to help her switch assignments. The symbol cards would be placed on a board. When one task was complete, such as folding a certain number of towels, Marilyn would return the card and get the next card showing the new task. The job coach developed a data form that would record Marilyn's activities. Marilyn would also check off tasks as they were complete.

The Results of Marilyn's Vocational Training Experience

The housekeeping manager and laundry supervisor agreed that Marilyn could perform the tasks in the transition component of her IEP. Furthermore, she was a dependable and productive worker. They offered to hire Marilyn in a part-time paid position in the hotel laundry. The laundry supervisor and the job coach would talk weekly, and the job coach would be on call to the supervisor when needed.

Marilyn's Vocational Training Experience and the FLSA

Marilyn's vocational training experience met all of the guidelines established by the U.S. Departments of Labor and Education for nonemployment relationships according to the Fair Labor Standards Act. Training site selection was consistent with Marilyn's transition plan objectives, results of her previous CBVE activities, and her own vocational preferences. A letter of agreement was signed by the parents and the employer. The letter said that the training was part of Marilyn's educational program and would be under the supervision of school personnel. The training period would not exceed 120 hours. Marilyn would not be paid during this time. The hotel stipulated that Marilyn would not replace an employee in his or her job, but that Marilyn would work with regular hotel employees. Marilyn was assigned to a supervisor and a "buddy." Marilyn's job coach, hotel supervisor, and buddy made several adaptations to her work routines to enable her to succeed. Her productivity rates increased to 75% of those of hotel laundry employees.

If Marilyn and her parents decide to accept the Brentwood Inn's offer of part-time employment, Marilyn will enter the cooperative vocational education component of CBVE. With Marilyn's job coach and other school personnel, they must ensure that this placement meets FLSA requirements. There are several options. Marilyn could be paid the same wages as those earned by hotel employees. Under the FLSA, Marilyn could receive a training wage less than that paid hotel laundry employees for up to 90 days, and then paid the regular wage. Or, Marilyn could be paid a commensurate wage to that earned by hotel employees if her work rates continue at 75% of those of the employees. If this commensurate wage is less than minimum wage ($4.25), the Brentwood Inn and the school district must apply to the DOL Wage and Hour Division for approval under Section 14 of the FLSA. They must obtain the certificate to pay a commensurate wage less than the minimum wage before Marilyn's begins part-time employment.

Example 4: Cooperative Vocational Education in a Restaurant

Greg is a High School Senior with a Mild Disability

Greg is 19 years old and eligible to graduate from high school at the end of the school year. He has a mild disability. Greg is highly verbal but reads only on a second grade level. He has basic money skills and knows how to use the bus system in his suburban community. Greg began receiving special education services in the third grade. When he entered high school, Greg was placed in regular classes with resource instruction in reading and math.

Greg has had several encounters with the juvenile authorities while in high school. His most recent, shoplifting, resulted in his spending six months in a juvenile corrections facility. When he returned to school, his IEP team focused his special education program on helping him control his anti-social behavior.

Greg has participated in his last two IEP meetings. He has expressed an interest in getting a part time job, but his parents were against it. They feared it would interfere with his school work, and they want Greg to graduate. They were also concerned about Greg's ability to hold a job given his potential for disruptive behavior. Neither Greg nor his parents were interested in Greg attending vocational school.

The Transition Component of Greg's IEP

In his most recent IEP meeting Greg said that he was interested in the restaurant business. As part of a consumer education program he took during his junior year Greg had the opportunity to visit a variety of businesses in this community. The ones that attracted his attention were restaurants. The team agreed that the transition component of his IEP should focus on preparing Greg for employment after graduation. Greg's counselor agreed to search for a cooperative vocational education experience in the food industry as part of his special education program.

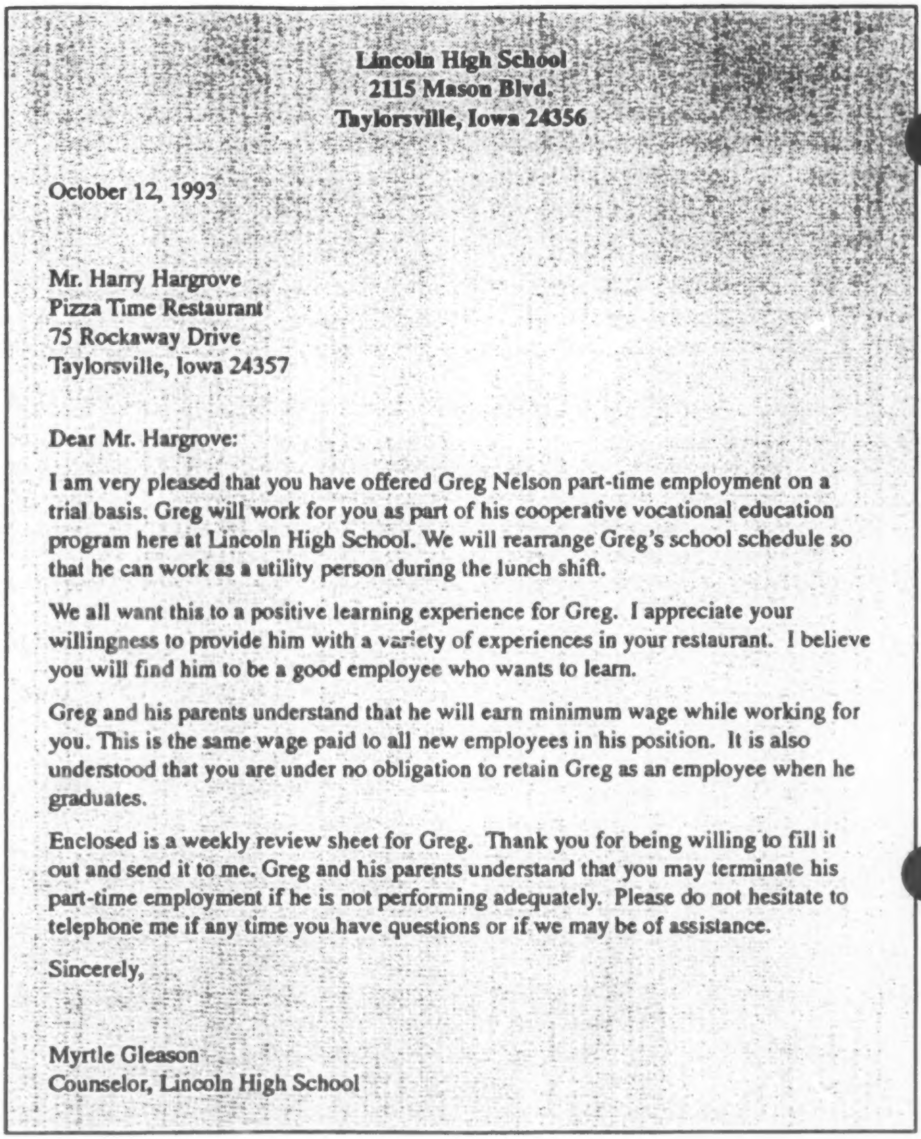
The transition component of Greg's IEP included the following objectives.

- **Greg will develop appropriate job interviewing skills.**
- **Greg will develop a resume with the assistance of his school counselor and parents.**
- **Greg will work part-time during second semester in a community-based setting.**

Education Experience

Greg's parents worked with him to prepare a resume reviewed by his counselor. The counselor also had Greg complete several job applications, and participate in simulated interviews with school staff and local community business volunteers.

Greg's counselor and special education teacher spoke about him with the manager of Pizza Time Restaurant. The owner agreed to interview Greg with the possibility of offering him a part-time job. The owner understood that if Greg was hired he would be paid the same salary as other employees in that position. Greg would have the opportunity to try several different work tasks under the supervision of the owner or a manager.



Lincoln High School
2115 Mason Blvd.
Taylorsville, Iowa 24356

October 12, 1993

Mr. Harry Hargrove
Pizza Time Restaurant
75 Rockaway Drive
Taylorsville, Iowa 24357

Dear Mr. Hargrove:

I am very pleased that you have offered Greg Nelson part-time employment on a trial basis. Greg will work for you as part of his cooperative vocational education program here at Lincoln High School. We will rearrange Greg's school schedule so that he can work as a utility person during the lunch shift.

We all want this to a positive learning experience for Greg. I appreciate your willingness to provide him with a variety of experiences in your restaurant. I believe you will find him to be a good employee who wants to learn.

Greg and his parents understand that he will earn minimum wage while working for you. This is the same wage paid to all new employees in his position. It is also understood that you are under no obligation to retain Greg as an employee when he graduates.

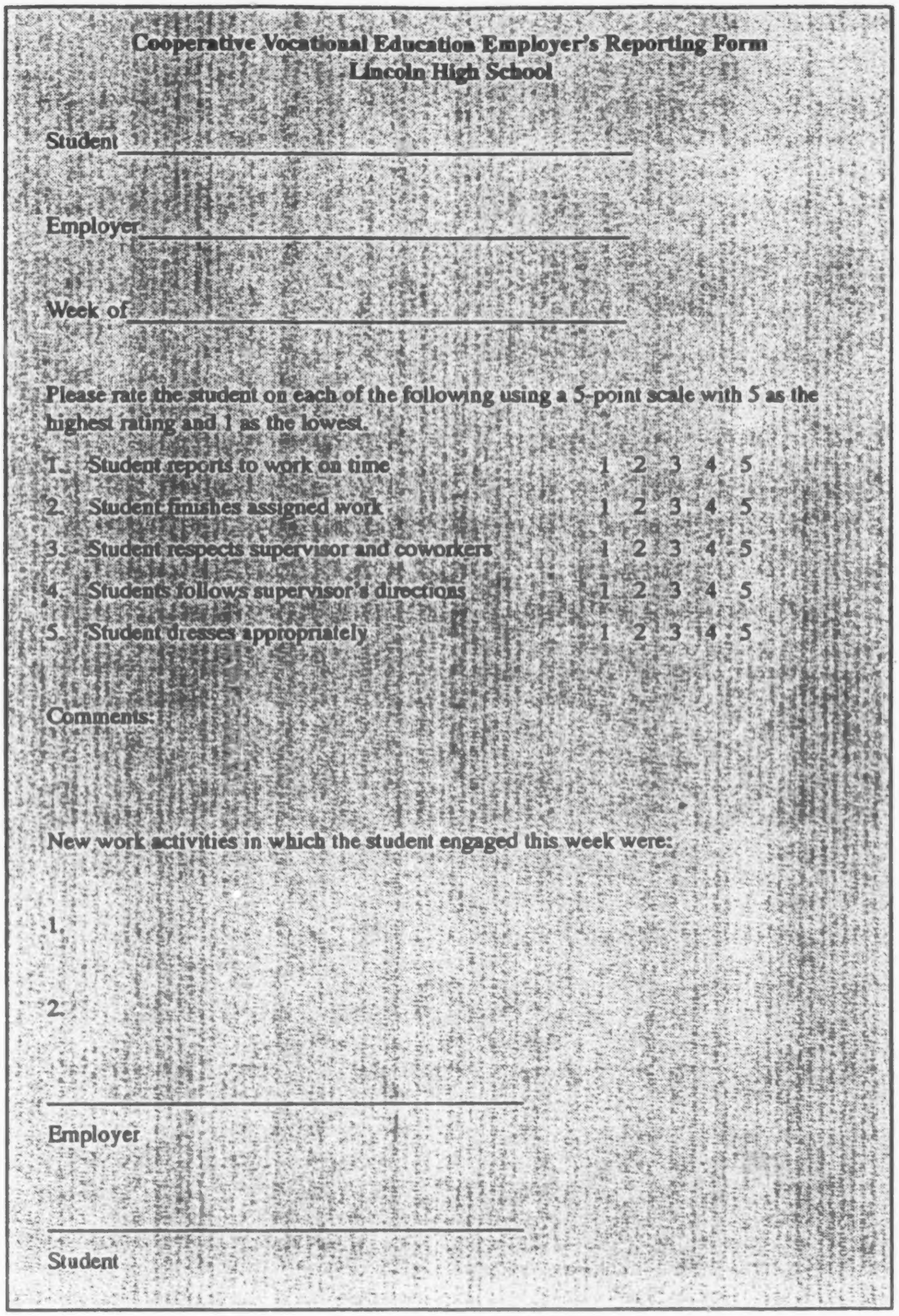
Enclosed is a weekly review sheet for Greg. Thank you for being willing to fill it out and send it to me. Greg and his parents understand that you may terminate his part-time employment if he is not performing adequately. Please do not hesitate to telephone me if any time you have questions or if we may be of assistance.

Sincerely,

Myrtle Gleason
Counselor, Lincoln High School

The owner interviewed Greg and offered him the job on a trial basis. Greg would work as a utility person clearing dishes and utensils from tables, wiping tables, setting tables, and filling water glasses and salt and pepper containers. The job was 15 hours per week (11:00 a.m. - 2:00 p.m.) for five days a week. Greg would begin during the second semester. His counselor rearranged Greg's second semester classes to fit this work schedule, but make sure Greg would have the course credits to graduate.

The restaurant owner and school personnel agreed that this was an educational experience for Greg although he was being paid. The owner would complete a weekly report on Greg's activities and send it to the school counselor. Similarly, either the counselor or Greg's special education teacher would observe Greg at work at least four times during the semester. The counselor assured the owner that school personnel would help him in working with Greg if necessary. Greg and his parents agreed that if Greg's school work suffered, Greg would quit his job.



Cooperative Vocational Education Employer's Reporting Form
Lincoln High School

Student ____________________

Employer ____________________

Week of ____________________

Please rate the student on each of the following using a 5-point scale with 5 as the highest rating and 1 as the lowest.

1. Student reports to work on time 1 2 3 4 5
2. Student finishes assigned work 1 2 3 4 5
3. Student respects supervisor and coworkers 1 2 3 4 5
4. Students follows supervisor's directions 1 2 3 4 5
5. Student dresses appropriately 1 2 3 4 5

Comments:

New work activities in which the student engaged this week were:

1.

2.

____
Employer

____
Student

Greg's Part-time Job at Pizza Time

Greg's counselor went with him to work his first day. Pizza Time owner, Mr. Hargrove, the counselor, and Greg talked about the terms of his employment to clarify expectations. Greg jumped right in to work. Mr. Hargrove's first three weekly reports were very positive. Mrs. Gleason, Greg's counselor, noted Greg was motivated and had a positive attitude toward his work when she had lunch at the restaurant.

Then, during the fourth week, Mrs. Gleason received a telephone call from Mr. Hargrove. He explained that Greg had reported to work that week in a bad mood, and was surly to customers on three occasions. Mr. Hargrove was concerned; he had spoken to Greg about his behavior with little success. Mrs. Gleason telephoned Greg's parents and reported the situation. They talked with Greg. It seems that Greg bus ran late that week, and Greg was anxious about getting to work on time. This anxiety showed in his attitude toward his co-workers and customers.

Upon learning of this situation, Mrs. Gleason called Mr. Hargrove to explain. She also talked with Greg. Since Greg couldn't leave school earlier than 10:15 a.m., everyone agreed that he wouldn't be penalized if late for work due to traffic and bus operations. Mr. Hargrove explained this to Greg. With this pressure removed, Greg was fine. Mrs. Gleason and Greg's special education teacher saw Greg's confidence and productivity improve when they visited the restaurant later in the semester.

The Results of Greg's Cooperative Vocational Experience at Pizza Time

Since Greg has been on the job, Mr. Hargrove has expanded his responsibilities to include taking carry-out orders on the telephone and working the front counter. Greg also got a raise of fifty cents an hour. Greg's money skills have approved greatly; with the sense of responsibility, he has made few errors. Greg works on Saturdays when regular employees are absent or the restaurant is busy.

Greg's parents, although at first skeptical, have noticed Greg applies himself even more seriously to his school work. He's made frequent comments such as "Now I know why I had to learn math." Mr. and Mrs. Nelson know that Mr. Hargrove asks Greg how he school work is coming. They believe this attention has motivated Greg more than their prompting ever did.

In May, Mr. Hargrove offered Greg a full time position as a waiter following graduation. Greg accepted eagerly. Mr. Hargrove has even suggested that Greg consider enrolling in a training program for potential restaurant managers later this year while he continues to work at Pizza Time.

Greg's CBVE Experience and the FLSA

Greg's part-time employment at Pizza Time was consistent with FLSA requirements. Since he earned minimum wages, there was no need to apply for waivers or special certificates from the DOL Wage and Hour Division. Greg's employer accepted supervisory responsibility. Since Greg was nineteen years old, there were no restrictions on the number of hours worked in non-hazardous jobs.

The experience met Greg's desire to work and conformed to the transition component of his IEP. While Mr. Hargrove was not obligated to employ Greg after the CBVE experience, he did so. Greg attained his transition goal of full time employment following high school graduation.

Pizza Time paid Greg, but the school shared responsibility for his CBVE placement. When Greg experienced difficulties on the job, his counselor and parents stepped in to resolve the situation. Both she and Greg's special education teacher monitored Greg's job performance as needed. The placement was clearly consistent with the definition of cooperative vocational education.

Example 5: Vocational Exploration in a Suburban Community

Stephen is a Fifteen-Year Old with a Severe Disability

Stephen is 15 years old and attends high school. He is diagnosed as having a severe disability. Steven is ambulatory and nonverbal, but he can recognize picture symbols related to daily activities and use basic signs to communicate. He has received a variety of special education and related services since he was three.

During the past school year Stephen was involved in two community-based vocational experiences. The first was in a warehouse where employees sorted paper and other office material for recycling. The other was a maintenance crew in an office building that collected and sorted recyclable materials. A school aide went with Stephen and two other students to each of these sites. The school provided transportation.

Stephen's Transition Plan for the 1993-1994 School Year

The school staff and Stephen's parents wanted him to have more community-based vocational experiences. They also wanted his transition plan to reflect goals and objectives that focused not only on specific work skills but also on social skills. This was the first IEP meeting in which Stephen participated. According to his parents, Stephen showed interest in baseball cards, computer games and television. His father said that Stephen also liked physical work, particularly working with his dad in the yard and garden. The team decided to place Stephen in the vocational exploration component of the school's CBVE program, and to work on his social skills in community environments.

Transition Goal: Stephen will participate in a minimum of two community-based exploration programs during the first semester of the 1993-1994 school year.

Transition Objectives

Stephen will:

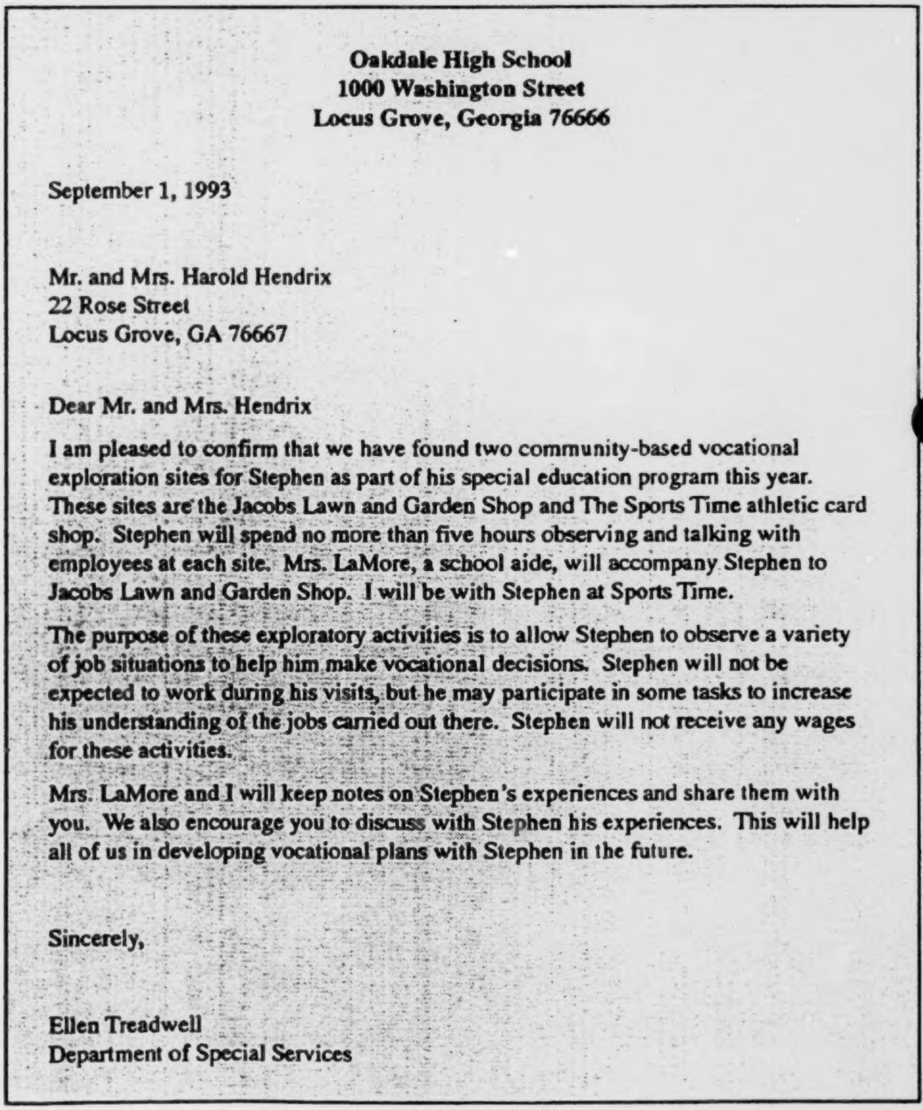
- participate in a minimum of two community-based exploration programs during the first semester;
- check his appearance before going to an exploration site;
- Initiate communication with employees at the sites and ask questions about job-related activities; and
- Indicate preferences for vocational possibilities at subsequent IEP meetings.

Jacobs Lawn and Garden Center and the Sports Time Card Shop

The school staff and the parents wanted to make sure that Stephen had different experiences than in the past. They also wanted to capitalize on his interests. Stephen's teacher contacted Jacobs Lawn and Garden Center, a local garden supply store and nursery. Mr. Jacobs, the owner, had not participated in a community-based vocational education program before, but he was willing to try. The teacher explained that Stephen would be scheduled for five one-hour visits to the nursery and would be accompanied by a school aide. The teacher also explained that Stephen was nonverbal, but could converse using basic signs. Mr. Jacobs agreed to show Stephen the basic operations of the garden center and allow Stephen to try some things with the aide's permission and supervision.

An aide in Stephen's school knew the owner of a sports card shop. It was a small business operated by the owner with part-time help on weekends. Stephen's teacher and aide went to see the card shop owner to discuss the possibility of an exploratory placement for Stephen. The owner was hesitant, primarily because of the value of some cards in the shop. When the teacher agreed to be on-site with Stephen, the owner agreed. Again, the teacher sent a follow-up letter to the owner and Stephen's parents confirming the exploratory placement, the purpose, and the requirements.

The teacher wrote to both business owners describing the purpose of Stephen's visits and the school's obligations and also theirs. Stephen's teacher also provided his parents with a letter describing Stephen's exploration sites. His parents gave their permission for Stephen to participate in these vocational exploration activities.



Oakdale High School
1000 Washington Street
Locus Grove, Georgia 76666

September 1, 1993

Mr. and Mrs. Harold Hendrix
22 Rose Street
Locus Grove, GA 76667

Dear Mr. and Mrs. Hendrix

I am pleased to confirm that we have found two community-based vocational exploration sites for Stephen as part of his special education program this year. These sites are the Jacobs Lawn and Garden Shop and The Sports Time athletic card shop. Stephen will spend no more than five hours observing and talking with employees at each site. Mrs. LaMore, a school aide, will accompany Stephen to Jacobs Lawn and Garden Shop. I will be with Stephen at Sports Time.

The purpose of these exploratory activities is to allow Stephen to observe a variety of job situations to help him make vocational decisions. Stephen will not be expected to work during his visits, but he may participate in some tasks to increase his understanding of the jobs carried out there. Stephen will not receive any wages for these activities.

Mrs. LaMore and I will keep notes on Stephen's experiences and share them with you. We also encourage you to discuss with Stephen his experiences. This will help all of us in developing vocational plans with Stephen in the future.

Sincerely,

Ellen Treadwell
Department of Special Services

Stephen's Experiences

Jacobs Lawn and Garden Center

At the nursery, Stephen watched general maintenance activities like stocking, loading and unloading trucks, and cleaning equipment. He also watched employees watering shrubs, planting flowers, and repotting bushes in the greenhouse. He particularly liked an older worker who showed him how to snip dead leaves from plants. During Stephen's visits to the nursery the owner and the older worker took extra time with him. They even learned a few basic signs to help in communication.

Stephen asked several questions during his visits to the nursery. With the help of his aide Stephen asked how often plants needed to be watered, why some plants were grown in the hothouse, and how old people had to be to work at the nursery. Stephen's aide commented to his parents and teacher that she had never seen him so outgoing. Stephen was most happy when he was outside in the tree operation of the business. He particularly liked bagging young trees for sale. Stephen signed to the aide and the nursery owner that he would like to plant a tree. The owner told him that he hoped he would have the chance to do that.

Sports Time

Stephen was very excited when he entered the card shop. He wanted to look at and touch everything. The owner was nervous. He said that sorting through cards he got at card shows was a big job. Cards are sorted by team, by year, and by value. The teacher asked if Stephen could try sorting cards by team. The owner had a stack of cards that he didn't consider to have much value and he hadn't had time to sort. Stephen's task was to sort the cards by teams, which he picked by player's uniforms. The teacher noted that Stephen was more interested in examining each card than sorting it. She terminated the activity after five minutes. The remainder of Stephen's first visit was spent with the owner as he organized display cases. Stephen showed little interest in this activity. The second and third visits to the card store did not go well, according to the anecdotal records kept by the teacher. Stephen lost interest quickly in the routine tasks of the card shop, and the owner was not comfortable with the situation. Everyone decided to stop Stephen's exploratory visits to the card shop.

The Results of Stephen's Vocational Exploratory Experiences

Stephen, his family, and his teacher met to discuss the results of his experiences. While they agreed that the experience with Sports Time had not worked out, it provided information that was useful to future decision-making. Stephen really enjoyed Jacobs Lawn and Garden Center and had asked to work there again. Stephen's parents said that he was really excited on the days that he went to the nursery. They noticed a difference in his dress and his attitude about going to school. They also said that Stephen talked about his visits and even offered his dad some "tips" on gardening. The team decided that Stephen's teacher would contact the Mr. Jacobs to explore the possibility of using the nursery as an assessment site.

Stephen's CBVE Experience and the FLSA

Community-based vocational exploration proved a valuable activity for Stephen's parents and teachers to use in identifying future transition goals and objectives. The planning, preparation, and supervision were all carried out according to the guidelines governing nonemployment placements established by the U.S. Departments of Labor and Education. Stephen's parents appeared fully informed; the experiences were clearly consistent with Stephen's IEP.

Most important, school personnel were not discouraged when Stephen's experience in Sports Time was not beneficial. The school could pursue placing Stephen in Jacobs Lawn and Garden Center during this school year as a vocational assessment activity. They need not wait until the next school year. More than one CBVE program component can occur in a single school year as long as the maximum hour requirements for each component are not exceeded.

Example 6: Vocational Assessment in a Large Business

Mindy is a Sixteen-Year-Old High School Sophomore

Mindy is 16 years old and is a sophomore in high school. She uses a motorized wheel chair to travel from place to place. Mindy talks using a Dynavox (a voice computer), along with facial expressions and gestures. She is very social and she is not hesitant to initiate conversations with others.

The Transition Component of Mindy's IEP

The previous transition component of Mindy's IEP established a goal that she would be employed, with appropriate supports, in the community after high school.

Long Term Transition Goal: **Mindy will be employed, with appropriate supports, in the community after high school.**

Transition Objectives

Mindy will:

- **Participate in vocational exploration within the school setting.**
- **Participate in IEP meetings and suggest preferences for work experiences.**
- **Master new vocabulary on the Dynavox related to work and work activities.**
- **Help with weight-bearing during toileting procedures.**

Mindy's vocational exploration experiences within the school included observing other students sort bottles and cans from the refreshment machines, and assisting office staff in filing student records. At Mindy's most recent IEP meeting, her parents said that they wanted Mindy to have more vocational opportunities in the community. Mindy likes going out and typically accompanies her parents on errands and social outings. The IEP team concurred that Mindy was ready to go into the vocational assessment phase of her CBVE.

The school's job developer identified an assessment site at Global Operations, Inc., an office operation that sorts a variety of records and other office supplies, and shreds unwanted materials. Mindy's IEP team met again and developed transition objectives for Mindy in this site.

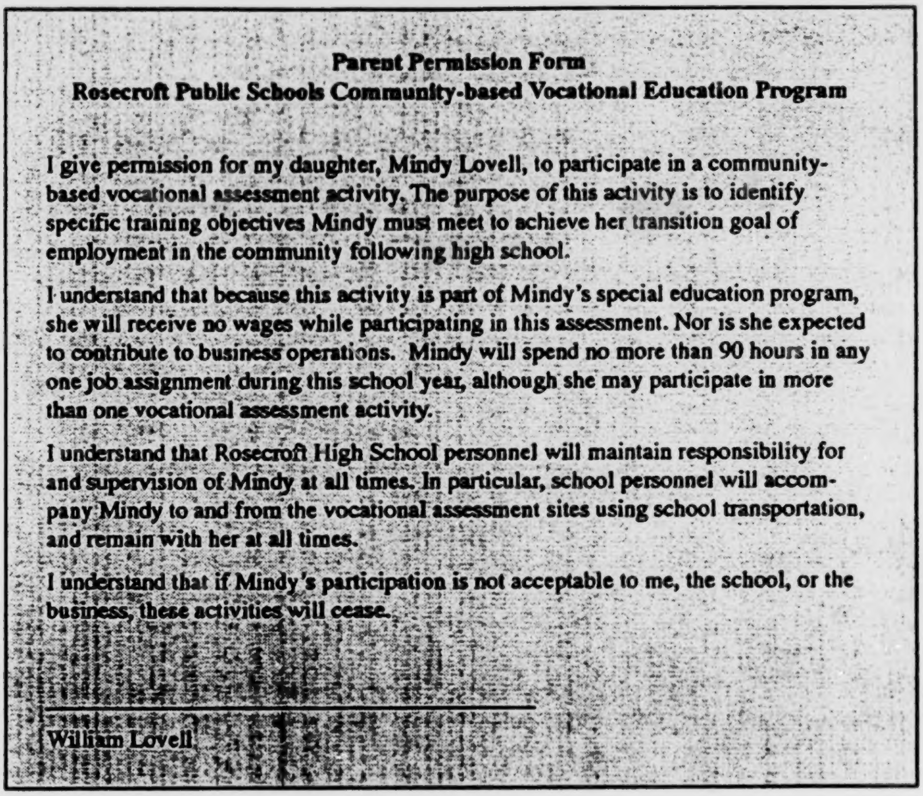
Transition Objectives for Vocational Assessment at Global Operations, Inc.

Mindy will:

- **Use the Dynavox to request records for preparation and shredding.**
- **Maintain a steady work pace.**
- **Remain on task for one-hour periods.**
- **Travel independently from the school bus to the assessment site, including using the elevator.**
- **Request assistance when she needs to use the rest room.**

Global Operations, Inc. agreed to serve as an assessment site for Mindy and another student. After visiting Global Operations, Mindy and her parents agreed to the CBVE placement. The vocational assessment would be under the direct supervision of the job developer, who would always be present.

The team recognized that Mindy's assessment objectives did not include work and social interactions with supervisors and coworkers. Rather, this activity focused on Mindy's mobility, communication capabilities, task performance, and stamina. The job developer would keep anecdotal records of Mindy's interactions with employees and use these as a basis for developing subsequent assessments in other sites.



Parent Permission Form
Rosecroft Public Schools Community-based Vocational Education Program

I give permission for my daughter, Mindy Lovell, to participate in a community-based vocational assessment activity. The purpose of this activity is to identify specific training objectives Mindy must meet to achieve her transition goal of employment in the community following high school.

I understand that because this activity is part of Mindy's special education program, she will receive no wages while participating in this assessment. Nor is she expected to contribute to business operations. Mindy will spend no more than 90 hours in any one job assignment during this school year, although she may participate in more than one vocational assessment activity.

I understand that Rosecroft High School personnel will maintain responsibility for and supervision of Mindy at all times. In particular, school personnel will accompany Mindy to and from the vocational assessment sites using school transportation, and remain with her at all times.

I understand that if Mindy's participation is not acceptable to me, the school, or the business, these activities will cease.

William Lovell

Preparations at Global Operations, Inc.

The job developer visited Global Operations three times prior to Mindy's placement there. He observed the office routines, figured out the work rates of other employees, identified accommodations that might be necessary, and talked with Mindy's supervisor and coworkers. After these visits, he developed an assessment plan. The plan assessed Mindy's:

- leaving the school bus, entering the building, using the evaluator and reporting to her work station,
- reporting to her work supervisor and requesting her assignment,
- retrieving documents;
- sorting documents to be shredded or recycled;
- shredding the correct documents; and
- requesting assistance in using the rest room.

Mindy's Vocational Assessment at Global Operations

The job developer designed a process for introducing Mindy to her vocational assessment activities. On the first trip to Global Operations, he helped Mindy into the building and told her that her work station was on the 6th floor. He asked if she knew how to use the elevator. She did and promptly pushed the "up" button. In the elevator Mindy knew that she needed to push a button for the 6th floor, but was not sure which button to push. The job developer helped by showing Mindy the 6th floor button. Once on the 6th floor, Mindy met her supervisor and learned that she would report to her supervisor whenever she came to the office. Mindy successfully returned to the elevator, pushed the "down" button, and learned to select "lobby" to get to the ground floor.

Mindy's second visit was like her first. In addition, the job developer introduced Mindy to the employee who would provide her with the materials for sorting, shredding, or recycling. On the trip out of the building, Mindy's job developer noticed her hesitancy to enter the elevator with other people. He suggested that she say "excuse me" and back her wheel chair inside.

During the third visit, the job developer showed Mindy how to retrieve the materials she would need to do her job. Mindy independently got to her work station and requested her assignment. When she went to the distribution point, however, she did not ask for documents to be sorted. The job developer waited, but eventually gave her a cue to request her work.

As new tasks were introduced, the job developer tracked Mindy's time-on-task behavior. He began with 15 minute intervals and continued to lengthen them up to one hour. Mindy enjoyed the work and quickly met her job developer's criteria.

A female employee agreed to accompany Mindy to the rest room when Mindy asked her for help. But Mindy was reluctant to ask. Often she waited too long. The job developer helped the employee prompt Mindy with comments like, "You've been working a long time. Don't you need to use the rest room?" Mindy became more comfortable, but was still reluctant to ask for help.

The Results of Mindy's Vocational Assessment

Mindy remained in this assessment situation for two months, working two hours daily on each of four days each week. Mindy's job developer ended the activity, having collected adequate assessment data on Mindy's transition objectives. He concluded that Mindy could and did respond appropriately to the work situation. She had: the necessary independent mobility to enter the office, the communication skills to request work, the organizational skills to follow directions, and the stamina and task behavior to complete assignments. He believed that additional emphasis needed to be placed on Mindy's willingness to ask for help, particularly in going to the rest room. Mindy could benefit from more vocational assessment activities in other settings.

The job developer, Mindy and her parents discussed the assessment results. Mindy's parents were particularly pleased that Mindy was sharing her work experiences with them, and seemed very pleased with herself. She was asking her parents what they did when they went to work. Her parents discussed their work roles with her and were encouraged by the way in which Mindy was able to relate to the work world.

Planning Mindy's Next Vocational Assessment

The job developer maintained his recommendation that Mindy participate in more assessment situations to make sure she had generalized the behavior exhibited in this situation. He also wanted to expand the CBVE assessment component to look at additional social skills, particularly interactions with coworkers. He explained that Mindy's past worksite tended to isolate employees because of the nature of the work. Mindy and her parents agreed that additional assessment situations would be helpful, particularly since Mindy had limited exploration experiences.

At a subsequent IEP meeting, the team broadened Mindy's vocational assessment program to include a more independent experience at a local thrift store. The store was on a transportation line served by buses equipped for wheel chairs. Mindy would be involved in sorting clothing items collected by type and quality. The job developer would remain involved and collect data without intruding.

Mindy's Vocational Assessment and the FLSA

Mindy's CBVE vocational assessment activities were planned and conducted according to the FLSA guidelines for such experiences. The assignment was consistent with Mindy's transition goals and objectives. Mindy and her parents were involved in the process. The school's job developer supervised Mindy on the job. The assessment results provided useful information in planning Mindy's subsequent CBVE activities, namely more vocational assessments.

Mindy's job developer was extremely conscientious. Had Mindy remained at Global Operations much longer, she would have worked there for more than 90 hours. (She worked eight hours each week.) This would have violated the hour limitation established under the FLSA guidelines for vocational assessment. Both the job developer and Mindy's parents believed that the Global Operations placement had yielded all of the possible assessment data, and that a second site was needed to assess Mindy's independent performance in a more integrated setting. They reconvened the IEP team and selected the thrift store as a subsequent CBVE vocational assessment site. Their actions were consistent with the FLSA guidelines for this CBVE component.

Example 7: Vocational Training in Three Community Settings

Vocational Training for a High School Junior with a Moderate Disability

Jason is a high school junior diagnosed as having a moderate disability. He is currently receiving instruction in reading and language arts, physical education, consumer math and industrial arts. Community-based vocational education is part of Jason's special education program.

Jason reads at approximately the third grade level. He travels throughout the community by himself on his bicycle.

The Transition Component of Jason's IEP

Jason and his parents attended the IEP meeting held at the beginning of his junior year. Last year, Jason's CBVE program included a vocational assessment as part of his industrial arts program. The assessment showed that Jason had a variety of vocational interests, good eye-hand coordination, the ability to follow written and verbal directions, and sufficient time-on-task behavior. Jason and his parents agreed with school personnel that no additional assessment was required; Jason could go directly into vocational training in a community setting.

The IEP team decided at the meeting that Jason should have several vocational training opportunities. Since Jason was not sure what he wanted to do after high school, the team established the transition goal that Jason would receive training in three job sites. Each training opportunity would be approximately eight weeks in length, three hours per day. Jason's involvement in multiple job sites would enable him to generalize basic job skills. The team agreed that Jason would visit perspective training sites and make his own selections.

Jason's Transition Goal: Jason will receive vocational training at three worksites in the community.

Transition Objectives

Jason will:

- Use a time clock accurately to begin and end work.
- Follow time schedules, arriving at work on time and following a break schedule.
- Interact appropriately with supervisors and coworkers.
- Participate in his own work evaluations, adding positive and negative comments and accepting constructive criticism.
- Read work-related materials and follow directions.

Jason's Choice of Vocational Training Sites

Jason observed and interviewed at five worksites. He selected three for his community-based vocational training experiences: a hospital, a grocery store, and a hardware store. Jason and his job coach developed specific competencies for him to attain during each vocational training experience.

Whitfield Farms Groceries

- packing a grocery bag
- collecting carts from parking lot
- street safety
- stocking shelves
- mopping/cleaning up spills and broken glass
- sweeping
- loading groceries into cars

Marion County General Hospital

- delivering meal trays to patient rooms
- matching the name on the tray to the name on the bed
- pushing large delivery cart with trays to rooms on three floors
- loading cart for delivery
- collecting trays after meals
- emptying cart, disposing of trash and sorting utensils, glassware, and plates
- loading dishwasher
- providing patients with basic assistance

Morgan's Hardware Store, Inc.

- sweeping aisles
- unloading and loading supply trucks
- loading customer cars
- stocking shelves
- pricing hardware items
- Helping customers, directing customers to appropriate personnel for assistance.

Jason's Training Experiences

Jason's job coach went with him during the first two to four weeks he was involved in each site. The coach instructed and helped Jason in interacting with employees. An employee in each site supervised Jason's training after this introductory period. The job coach or other school staff met with the employee and Jason weekly.

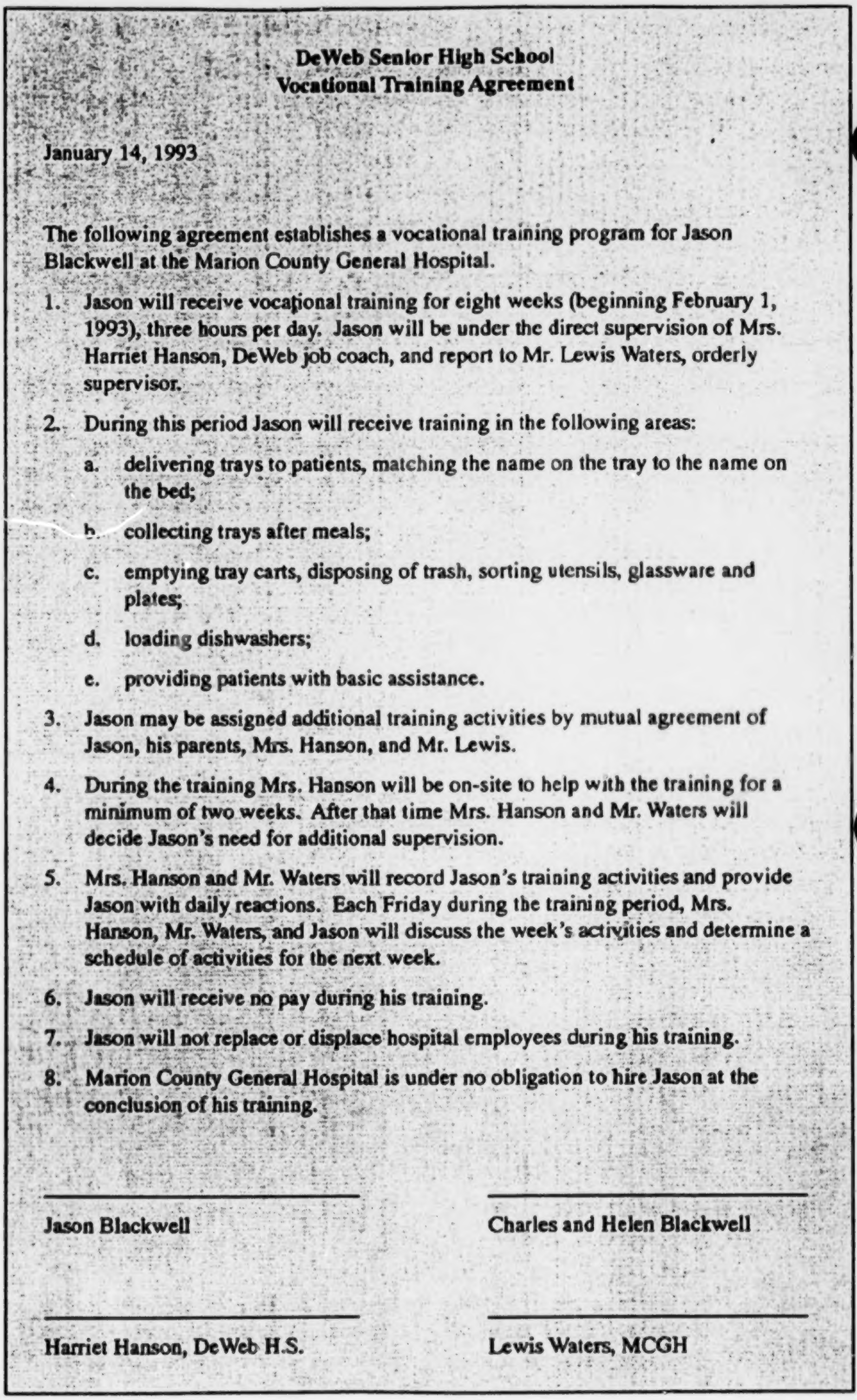
School staff recorded and compiled case notes on Jason's progress at each training site. Written evaluations occurred at the end of the job coach's supervisory period and at the end of the training experience. The employee, a supervisor, Jason, and the job coach participated in these evaluations.

The Results of Jason's Training Experiences

Jason was successful in all three training situations according to his job coach and the evaluations of the site employees and supervisors. Jason's parents reported that he obviously enjoyed working because he related his experiences and interactions with coworkers frequently. All of Jason's site supervisors commented on his positive attitude and willingness to take on any tasks assigned. Jason said he liked all three jobs, but particularly enjoyed interacting with the patients at the hospital. His hospital supervisor has mentioned the possibility of hiring him as an orderly during the summer.

Jason's Vocational Training Program and the FLSA

Jason's CBVE vocational training experiences were extremely successful. They were also planned and carried out according to the FLSA guidelines for vocational assessment. Should Marion County General Hospital offer Jason employment as on orderly this summer, there are several sources of support. Jason could be employed through the summer youth employment program of the local Job Training Partnership Act (JTPA). Or, Jason could elect to work for the hospital in a cooperative vocational education arrangement, simply by enrolling in summer school at DeWeb Senior High. School personnel would have to be available to share responsibility and supervisory duties as needed. Jason's IEP would have to provide for such a CBVE experience. Both the school and the hospital would have to decide if Jason's employment required any waivers from the DOL Wage and Hour Division. This would depend on the hourly wage the hospital offered to Jason.



DeWeb Senior High School
Vocational Training Agreement

January 14, 1993

The following agreement establishes a vocational training program for Jason Blackwell at the Marion County General Hospital.

1. Jason will receive vocational training for eight weeks (beginning February 1, 1993), three hours per day. Jason will be under the direct supervision of Mrs. Harriet Hanson, DeWeb job coach, and report to Mr. Lewis Waters, orderly supervisor.
2. During this period Jason will receive training in the following areas:
    a. delivering trays to patients, matching the name on the tray to the name on the bed;
    b. collecting trays after meals;
    c. emptying tray carts, disposing of trash, sorting utensils, glassware and plates;
    d. loading dishwashers;
    e. providing patients with basic assistance.
3. Jason may be assigned additional training activities by mutual agreement of Jason, his parents, Mrs. Hanson, and Mr. Lewis.
4. During the training Mrs. Hanson will be on-site to help with the training for a minimum of two weeks. After that time Mrs. Hanson and Mr. Waters will decide Jason's need for additional supervision.
5. Mrs. Hanson and Mr. Waters will record Jason's training activities and provide Jason with daily reactions. Each Friday during the training period, Mrs. Hanson, Mr. Waters, and Jason will discuss the week's activities and determine a schedule of activities for the next week.
6. Jason will receive no pay during his training.
7. Jason will not replace or displace hospital employees during his training.
8. Marion County General Hospital is under no obligation to hire Jason at the conclusion of his training.

Jason Blackwell	Charles and Helen Blackwell
Harriet Hanson, DeWeb H.S.	Lewis Waters, MCGH

Example 8: Cooperative Vocational Education in a Bank

Raymond is Twenty Years Old and Lives in a Group Home

Raymond is 20 years old and lives in a group home. He is attending his last year of high school. Raymond has a severe disability. He uses a walker and both manual and motorized wheelchairs. He is nonverbal and uses a total communication system. Raymond makes clear choices and has strong preferences.

The Job at the Local Bank

Raymond's goal is to secure paid employment in his community. The local bank previously involved with Raymond as a vocational assessment and training site, wants to hire him. The bank wants to pay Raymond an hourly wage below minimum wage, so they must obtain a special certificate under Section 14 of the FLSA. The data collected during Raymond's vocational training experience at the bank defined his productivity rate in comparison to those of the bank's nondisabled employees performing similar tasks. Raymond's rehabilitation counselor helped the bank obtain the special certificate establishing Raymond's commensurate hourly wage. The counselor made sure the bank had the certificate before employing Raymond through the cooperative vocational education program. Bank personnel agreed to review Raymond's productivity rate every six months, and adjust his salary accordingly.

The rehabilitation counselor configured this job for Raymond at the bank by combining several job elements to match Raymond's needs and abilities. The tasks include:

- shredding unwanted material;
- operating the microfiche system;
- zip stripping checks; and
- delivery of interoffice mail.

The Transition Component of Raymond's IEP

Raymond's parents live in a different town and he has had a surrogate parent represent him in special education issues since he was 17. Raymond and his surrogate parent attended the IEP meeting. The IEP team established the transition goal that Raymond will work in the bank's main office.

Transition Goal: Raymond will work in the bank's main office.

Transition Objectives

Raymond will:

- initiate communication with supervisor and co-workers.
- respect others' personal space.
- work on-task for up to two hours at a time.
- move from one task to another without supervision.
- use the rest room independently, or request assistance when needed.
- participate in employee evaluations.

Preparations for Raymond's Job at the Bank

The group home staff will provide Raymond's transportation to and from work. Raymond will work from 9:30 a.m. until 3:00 p.m. Monday through Friday. A job coach from the department of vocational rehabilitation will go to work with Raymond during the first three months of his employment. During this initial phase, Raymond will work in 15 minute segments with five-minute breaks while he is building stamina.

Raymond's Experiences at the Bank

Raymond's vocational rehabilitation counselor had previously placed clients in the bank setting and he was familiar with the work that Raymond would do. Raymond's bank supervisor and the counselor had previously established a productivity rate for each task by a nondisabled employee. The counselor decided that Raymond could initially work at 25 percent of that rate. The bank supervisor agreed that as Raymond's productivity increased, his salary would increase accordingly.

The first day on the job, the counselor introduced Raymond to his supervisor. Raymond had worked under another supervisor during assessment and training. He later told the counselor that he worried that his new supervisor was a woman. Raymond remembered several of his coworkers and seemed glad to see them.

Raymond had received training in each task he would do at the bank during his vocational training placement there. So, the counselor spent the first week detecting whether Raymond had retained his skills and productivity rate.

Raymond showed that he had retained the skills, but his production rate was down. The counselor thought this due to little practice. He decided to target each task separately until that task productivity rate increased before moving to multiple task assignments. The counselor and Raymond's bank supervisor worked out this program. Raymond reported to his supervisor for direction each day.

The counselor saw that Raymond was reluctant to interact with the supervisor. The bank supervisor confided to the counselor that she was also uncomfortable working with Raymond. The counselor's attempts to ease these interactions were unsuccessful. The counselor explained Raymond's communication system to the supervisor. He also explained that she should speak to Raymond directly and not through the counselor. By the end of the second week, the relationship was less strained. Raymond reported to the supervisor and received his assignments, but the relationship was formal. Raymond did not exhibit the same behavior with coworkers. He and they were much more outgoing.

When Raymond's productivity rates returned to their previous levels, he was assigned multiple tasks. Raymond maintained these rates, and sometimes increased them. Raymond progressed to multiple task assignments. However, he had problems keeping these assignments in order. The counselor instituted verbal cues about task sequence, choosing these rather than a manual system. He worked with bank employees, and they gave Raymond verbal cues as well.

When Raymond received his first pay check, he was confused. His previous money experiences had been with cash, which he had used to buy personal items. The counselor realized that he would have to add a training activity to Raymond's program: opening and using a checking account. A bank clerk volunteered to help. Raymond wanted to see his money, which the clerk arranged. Then they deposited the money. When Raymond wanted to cash a check, he went to the clerk for assistance. The clerk also began to take breaks with Raymond. They would go to the deli across the street where he would select snacks. The clerk worked with Raymond on how to give the next highest amount of money and receive change. Soon Raymond was picking up sandwiches and drinks for other employees at lunch time. The counselor noted he really liked "showing-off" his new money skills.

At the end of three months the counselor began to spend less time with Raymond. He told Raymond's supervisor he felt he could leave completely, but would remain on call. The supervisor was concerned. After a discussion with the supervisor and Raymond, the counselor suggested that Raymond report to another employee to receive his instructions for the day.

The Results of Raymond's Cooperative Vocational Education Experience

The counselor or a bank employee continued to monitor Raymond's productivity rates. Everyone agreed that Raymond, the counselor, and the supervisor would formally evaluate Raymond's work in six months, and explore the possibility of continued employment when Raymond leaves school.

Raymond's Cooperative Vocational Education Experience and the FLSA

Raymond's cooperative vocational education experience comprises his special education program under his IEP. His employment with the bank is entirely consistent with FLSA requirements. School personnel, Raymond's rehabilitation counselor, and the bank personnel were careful to obtain a special wage certificate before Raymond began work. Under this certificate, they paid Raymond the commensurate wage of $1.25 an hour based on his productivity as compared to nondisabled employees doing the same work. Raymond is not entitled to permanent employment when he leaves school. However, the bank did agree to consider this possibility, and increase his hourly wage based on performance during the next six months.

Raymond's rehabilitation counselor and school personnel worked cooperatively to carry out Raymond's CBVE placement. When Raymond and his first bank supervisor had difficulty relating to each other, the counselor initiated a positive change. The counselor was alert in adding the activity of managing a checking account to Raymond's CBVE experience. Adding this activity did not require reconvening Raymond's IEP team.

Appendix A

Organizations Providing Assistance in the Planning of Transition Services for Students with Disabilities

Organizations Providing Assistance in the Planning and Delivery of Transition Services to Students with Disabilities

The Office of Special Education Programs Regional Resource and Federal Centers Programs

States	Center
Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey	Lois Holbrook Northeast Regional Resource Center Trinity College Colchester Avenue Burlington, Vermont 05401 Telephone: (802) 658-5036
Maryland, Delaware, Virginia, Washington, D.C., Kentucky, Tennessee, North Carolina, South Carolina, West Virginia	Carol Massonari MidSouth Regional Resource Center University of Kentucky Mineral Industries Building Lexington, Kentucky 40506-0051 Telephone: (606) 257-4152
Georgia, Alabama, Florida, Mississippi, Puerto Rico, Virgin Islands, New Mexico, Texas, Oklahoma, Arkansas, Louisiana	Tim Kelly South Atlantic Regional Resource Center 1236 North University Drive Plantation, Florida 33322 Telephone: (305) 473-6106
Illinois, Ohio, Indiana, Pennsylvania, Wisconsin, Minnesota, Michigan	Karen Carson Great Lakes Area Regional Resource Center The Ohio State University 700 Ackerman Road, Suite 440 Columbus, Ohio 43202 Telephone: (614) 447-0844
Montana, Wyoming, North Dakota, South Dakota, Utah, Colorado, Nebraska, Kansas, Iowa, Missouri, Bureau of Indian Affairs	Jack Rudio Mountain Plains Regional Resource Center 1780 North Research Parkway, Suite 112 Logan, Utah 84321 Telephone: (801) 752-0238
Oregon, Idaho, Washington, Alaska, California, Arizona, Nevada, Trust Territories, Guam, American Samoa, Hawaii, Northern Marianas	Patty Zembrosky Barkin and Jane Storms Western Regional Resource Center College of Education University of Oregon Eugene, Oregon 97403 Telephone: (503) 346-5641
National	Debra Price-Ellingstad Federal Resource Center Academy for Educational Development 1255 23rd Street, N.W., Suite 400 Washington, D.C. 20037 Telephone: (202) 862-1900

Office of Special Education Programs State Systems Change Grants

States	Center
Arkansas	Patsy Bevill Arkansas Transition Program 1400 West Markham P.O. Box 3811 Little Rock, Arkansas 72203 Telephone: (501) 324-9595
California	Judy Hegenauer State Coordinator California School to Work Interagency Transition Project 717 K Street, Suite 218 Sacramento, California 95814 Telephone: (916) 443-8693
Colorado	Susan McAlonan Co-Director Colorado Department of Education Colorado Systems Change Transition Project 201 East Colfax Avenue Denver, Colorado 80203 Telephone: (303) 866-6715
	Alexander "Sandy" Thomson Transition Project Co-Director Rocky Mountain Resource and Training Institute 6355 Ward Road, Suite 310 Arvada, Colorado 80004 Telephone (303) 420-2942
Connecticut	Karen Palma-Holiday Transition Project Coordinator Connecticut State Department of Education Division of Educational Support Services 25 Industrial Park Road Middletown, Connecticut 06457 Telephone: (203) 638-4242
Hawaii	Howard Okimoto State Transition Coordinator Special Education Section 3430 Leahi Avenue Honolulu, Hawaii 96815 Telephone: (808) 737-9859

States	Center
Iowa	Roberta Ginavan Project Manager Iowa Department of Education Division of Vocational Rehabilitation Services 510 East 12th Street Des Moines, Iowa 50319-0146 Telephone: (515) 281-4144
Kansas	Donna Wandry Project Director Kansas State Board of Education Kansas Transition Systems Change Project 120 S.E. 10th Street Topeka, Kansas 66612 Telephone: (913) 296-6054
Kentucky	Barney Fleming Kentucky Systems Transition Project IHDI-University of Kentucky 102 Mineral Industries Building Lexington, Kentucky 40506-0051 Telephone: (606) 257-4408
Massachusetts	Marie Lindahl Project Coordinator Massachusetts Department of Education Bureau of Program Audit and Assistance Division of Special Education 350 Maine Street Malden, Massachusetts 02148-5023 Telephone: (617) 388-3300
Maine	Larry Glantz Project Director University of South Maine Transition Project Muskie Institute 145 Newberry Street Portland, Maine 04101 Telephone: (207) 874-6538
Minnesota	Stephanie Corbey Project Director Minnesota Department of Education 924 Capitol Square Building 550 Cedar Street St. Paul, Minnesota 55101 Telephone: (612) 296-0280

States	Center
Minnesota (continued)	Sandy Thompson Transition Coordinator Minnesota Department of Education 828 Capitol Square Building 550 Cedar Street St. Paul, Minnesota 55101 Telephone: (612) 296-2965
North Carolina	Freda Lee Consultant North Carolina Department of Public Instruction Division of Exceptional Children's Services 301 North Wilmington, Education Building Raleigh, North Carolina 27601-2825 Telephone: (919) 715-2003
North Dakota	Deanne L. Home Transition Coordinator North Dakota Department of Public Instruction Minot State University 500 University Avenue West Minot, North Dakota 58707 Telephone: (701) 857-3167
Nebraska	Barbara Schliesser Nebraska Department of Education P.O. Box 94987 Lincoln, Nebraska 68509 Telephone: (402) 471-4324
New Hampshire	Carol Tashie Project Coordinator Turning Points: New Hampshire Institute on Disability/ UAP, University of New Hampshire 10 Ferry Street #14 Concord, New Hampshire 03301 Telephone: (603) 228-2084
New Mexico	Andy Winnegar New Mexico State Department of Education Division of Vocational Rehabilitation 435 St. Michaels Drive, Building D Santa Fe, New Mexico 87505 Telephone: (800) 866-2253
New York	Debra Colley Coordinator of Program Development New York State Education Department Technical Assistance and Support Services One Commerce Plaza, Room 1613 Albany, New York 12234 Telephone: (518) 473-4381

States	Center
New York (continued)	Lawrence Gloeckler New York's Secondary and Transition Services for Youth with Disabilities Program c/o New York State VESID One Commerce Plaza, Room 1613 Albany, New York 12234 Telephone: (518) 474-3060
Oregon	Brigid Flannery Project Director Oregon Department of Education Division of Special Education 700 Pringle Parkway N.E. Salem, Oregon 97310 Telephone: (503) 378-6073
Texas	John Elam Texas Collaborative Transition Project 1701 N. Congress Avenue Austin, Texas 78701 Telephone: (512) 463-9414
Utah	Donna Suter Project Director STUDY Project 350 East 500 South, Suite 202 Salt Lake City, Utah 84111 Telephone: (801) 533-6264
Virginia	Sharon de Fur, Ph.D. Associate Specialist Virginia Department of Education Adolescent Services Division (DOE) P.O. Box 2120 Richmond, Virginia 23216-2120 Telephone: (804) 225-3242
Vermont	Richard Schattman University of Vermont Special Education/Social Work/Social Service 409 Waterman Building Burlington, Vermont 05405 Telephone: (802) 656-2936
Washington	Eugene Edgar Center for Change in Transition Services Experimental Education Unit WJ-10 University of Washington Seattle, Washington 98195 Telephone: (206) 543-4011

States	Center
Washington (continued)	Sue Elliot Washington Resource and Technical Assistance Center for Transitional Services EEU, WJ-10 University of Washington Seattle, Washington 98195 Telephone: (206) 543-4011
	Jim Rich Transition Coordinator State of Washington Superintendent of Public Instruction Old Capitol Building, FG-11, P.O. Box 47200 Olympia, Washington 98504-7200 Telephone: (206) 753-6733
West Virginia	David Sable Project Director West Virginia Statewide Transition #2 Players' Club Drive Charleston, West Virginia 25311 Telephone: (304) 558-1244

U.S. Department of Labor

Employment Standards Administration

Wage and Hour Division

Section 14 Specialists

States	DOL Regional Office
Connecticut, Maine, Massachusetts, Rhode Island, Vermont, New Hampshire	Margaret MacDonald Boston Region Office, DOL 1 Congress Street 11th Floor Boston, Massachusetts 02114 Telephone: (617) 565-2095
New York, New Jersey	William Devins New York Region Office, DOL Room 750 201 Varick Street New York, New York 10014 Telephone: (212) 337-2000
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia	James Bundick Philadelphia Region Office, DOL Gateway Building, Room 15210 3535 Market Street Philadelphia, Pennsylvania 19104 Telephone: (215) 596-0102
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Kentucky, Tennessee	Berdelle W. Johnson Atlanta Region Office, DOL Room 121 Peachtree Street, N.E. Atlanta, Georgia 30367 Telephone: (404) 347-7015
Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	Robert Halson Chicago Region Office, DOL 230 South Dearborn Street Chicago, Illinois 60604 Telephone: (312) 353-7246
Arkansas, Louisiana, New Mexico, Oklahoma, Texas	Patricia Davidson Dallas Region Office, DOL 525 Griffin Square, Room 858 Dallas, Texas 75202 Telephone: (214) 767-4538
Iowa, Kansas, Missouri, Nebraska	Karen Chaikin Kansas City Region Office, DOL 2000 Federal Office Building 911 Walnut Street Kansas City, Missouri 64106 Telephone: (816) 426-5549
	Verdis Greene Telephone: (816) 426-5382

States	**DOL Regional Office**
Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	Deltheia Lowery Denver Region Office, DOL Federal Office Building 1961 Stout Street, Room 1408 Denver, Colorado 80294 Telephone: (303) 844-5302
Arizona, California, Hawaii, Nevada, Guam	Diane Reese San Francisco Region Office, DOL Federal Building 300 West Congress Street, FB-41 Tucson, Arizona 85701-1390 Telephone: (602) 670-4822
Alaska, Idaho, Oregon, Washington	Virginia Francis Seattle Region Office, DOL 1111 3rd Avenue Seattle, Washington 98174-3212 Telephone: (206) 442-1914

Appendix B

U.S. Departments of Labor and Education Guidelines for Implementing Community-Based Vocational Education Programs for Students with Disabilities

United States Department of Education

Office of Special Education and Rehabilitative Services

TO: Chief State School Officers

FROM: Judy A. Schrag
Director
Office of Special Education Programs

SUBJECT: Guidelines for Implementing Community-based Educational Programs for Students with Disabilities

A number of State and local educational agencies have contacted the Office of Special Education Programs (OSEP) seeking guidance in implementing community-based education programs, that comply with the provisions of the Fair Labor Standards Act (FLSA).

The intent of the FLSA is to ensure that individuals are not exploited in our Nation's workplace. The intent of community-based training for students with disabilities is to provide structured educational activities which will lead to employment in their communities. Community-based training has been demonstrated to be an extremely effective strategy for improving employment outcomes. However, the expansion of community-based educational programs have often been slowed because of a need for further guidance pertaining to the implementation of the FLSA.

The U.S. Departments of Education and Labor have worked together to develop guidelines that detail the criteria to be met by educational agencies to ensure that the U.S. Department of Labor will not assert an employment relationship for purposes of the FLSA. A copy of these *Guidelines* is attached for your review and use. Also, attached is a copy of a "Dear Colleague" letter that gives background information and a *Statement of Principle*.

OSEP will be working with the recently funded Institute to Evaluate and Provide Technical Assistance to States Implementing Cooperative Projects to Improve Transition Services, to develop technical assistance materials in an effort to provide technical assistance to the field.

If you have questions regarding the attached information, please call Dr. William Halloran at (202) 205-8112.

Attachments

cc: State Special Education Directors
Special Interest Group Representatives
OSEP Technical Assistance and Dissemination Providers
All OSEP Staff

United States Department of Education

Office of Special Education and Rehabilitative Services

Dear Colleague:

The Departments of Education and Labor have collaborated to promote opportunities for educational placements in the community for students with disabilities while assuring that applicable labor standards protections are strictly observed.

Pursuant to the Individuals with Disabilities Education Act (IDEA), individualized education programs are developed to provide students with disabilities an opportunity to learn about work in realistic settings and thereby help such students in the transition from school to life in the community. Since the affirmation of students' rights to an appropriate free public education in 1975, many students with disabilities have benefitted from participation in vocational education programs in their public schools. Students with more severe disabilities, however, have experienced fewer benefits from participation in such programs. Alternative, community-based, and individualized education and training programs have emerged to meet their needs.

Our Departments share an interest in promoting educational experiences that can enhance success in school-to-work transition and the prospects that these students become effective, productive workforce participants and contributors to their community. At the same time, these students must be afforded the full protection of the nation's labor laws and not be subject to potential abuse as they start this transition through community-based educational experiences.

Existing Department of Labor guidelines which define "employees" for purposes of applying the requirements of the Fair Labor Standards Act (FLSA) do not specifically address community-based education programs for students with disabilities. To assist program administrators in developing programs or making placements that do not create questions about the establishment of an employment relationship between the students and participating businesses in the community, the Employment Standards Administration (Department of Labor), and the Offices of Vocational and Adult Education, and Special Education and Rehabilitative Services (Department of Education) have developed the following guidance.

Statement of Principle

The U.S. Departments of Labor and Education are committed to the continued development and implementation of individual education programs, in accordance with the Individuals with Disabilities Education Act (IDEA), that will facilitate the transition of students with disabilities from school to employment within their communities. This transition must take place under conditions that will not jeopardize the protections afforded by the Fair Labor Standards Act to program participants, employees, employers, or programs providing rehabilitation services to individuals with disabilities.

Guidelines

Where ALL of the following criteria are met the U.S. Department of Labor will NOT assert an employment relationship for purposes of the Fair Labor Standards Act.

- *Participants will be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting.*
- *Participation will be for vocational exploration, assessment, or training in a community-based placement worksite under the general supervision of public school personnel.*
- *Community-based placements will be clearly defined components of individual education programs developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative vocational education components will be included in the students' Individualized Education Program (IEP).*
- *Information contained in a student's IEP will not have to be made available; however, documentation as to the student's enrollment in the community-based placement program will be made available to the Departments of Labor and Education. The student and the parent or guardian of each student must be fully informed of the IEP and the community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the student-participant to wages.*
- *The activities of the students at the community-based placement site do not result in an immediate advantage to the business. The Department of Labor will look at several factors.*
    1) *There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.*
    2) *The students are under continued and direct supervision by either representatives of the school or by employees of the business.*
    3) *Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.*
    4) *The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.*
- *While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:*

Vocational exploration	*5 hours per job experienced*
Vocational assessment	*90 hours per job experienced*
Vocational training	*120 hours per job experienced*

- *Students are not entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.*

It is important to understand that an employment relationship will exist unless all of the criteria described in this policy guidance are met. Should an employment relationship be determined to exist, participating businesses can be held responsible for full compliance with FLSA, including the child labor provisions.

Businesses and school systems may at any time consider participants to be employees and may structure the program so that the participants are compensated in accordance with the requirements of the Fair Labor Standards Act. Whenever an employment relationship is established, the business may make use of the special minimum wage provisions provided pursuant to section 14(c) of the Act.

We hope that this guidance will help you achieve success in the development of individualized education programs.

ROBERT R. DAVILA
Assistant Secretary
Office of Special Education
and Rehabilitative Services
U.S. Department of Education

CARI M. DOMINGUEZ
Assistant Secretary
Employment Standards
Administration
U.S. Department of Labor

BETSY BRAND
Assistant Secretary
Office of Vocational and
Adult Education
U.S. Department of Education

Appendix D: Compliance Checklists

APPENDIX D

COMPLIANCE CHECKLISTS

COMPLIANCE CHECKLIST

FLSA Part 525 Employment of Workers with Disabiities Under Special Certificates

	YES	NO	
1.	☐	☐	Does the employer have copies on file of the Fair Labor Standards Act?
2.	☐	☐	Does the employer have copies on file of Part 525?
3.	☐	☐	Does the employer have copies on file of Part 4, Service Contract Act? (if applicable)
4.	☐	☐	Does the employer have copies on file of the Walsh Healey Public Contracts Act? (if applicable)
5.	☐	☐	Does the employer know what areas are covered by the Fair-Labor Standards Act, the Service Contracts Act, and the Public Contracts Act?
6.	☐	☐	Does the employer know which staff members are exempt from overtime payments? (Also, why?)
7.	☐	☐	Does the employer keep a record of all the hours worked by students with disabilities and non-exempt staff members?
8.	☐	☐	Are the hours worked by each person totaled each week (even if the school has a bi-weekly or semi-monthly payroll) and time and one-half the regular rate of pay paid for all hours over 40 worked in each week?
9.	☐	☐	Are short breaks (less than 30 minutes) in the mid-morning and/or mid-afternoon counted as hours worked?
10.	☐	☐	Are employees' compensable hours (e.g., productive work, waiting for more work, remaining available for the next assignment) clearly distinguishable from hours which are not compensable (e.g., self-help skills training, recreation, job seeking skills training, independent living skills, basic education) on employees' time records?
11.	☐	☐	For employers whose work force primarily consists of nondisabled workers, is the prevailing wage used, the wage paid to that employer's experienced nondisabled employees performing similar work?
12.	☐	☐	For employers with a workforce primarily consisting of students disabled for the work, are prevailing wage rates ascertained by surveying no less than three comparable firms (# employees or competes for contracts) doing similar work in the area?
13.	☐	☐	If fewer than three firms in the geographic labor market, are firms in the closest comparable community surveyed for prevailing wages paid to experienced nondisabled workers?
14.	☐	☐	If fewer than three firms in the geographic labor market, are employment services such as USDOL/Bureau of Labor Statistics or State Employment Agency contacted for wage data paid to experienced workers (not entry level?
15.	☐	☐	Does the employer keep required documentation of prevailing wages as required by 525.10(g)?
16.	☐	☐	Are prevailing wages updated/revised at least once a year?
17.	☐	☐	Are prevailing wages revised when minimum wages increase?
18.	☐	☐	If paying piece rates, does the employer conduct industrial work measurement methods (e.g., stop watch time studies, predetermined time systems, standard data, etc.)?
19.	☐	☐	Does the employer keep copies of all time studies?
20.	☐	☐	Are the piece rates based on the results of the time studies and current prevailing wage?
21.	☐	☐	Is the particular method used by the employer for setting piece rates generally accepted by industrial engineers? Is it verifiable?
22.	☐	☐	Has the industrial work method been properly executed?
23.	☐	☐	If stop watch time studies are made, are persons used whose productivity represents normal or near normal performance?

24. ☐ ☐ Have persons observed been given time to practice their work in order to overcome initial learning curve?

25. ☐ ☐ Are persons observed using the same specific work method(s) and tools which are available to students with disabilities?

26. ☐ ☐ Are appropriate time allowances (at least 10 minutes per hour) used in conducting time studies?

27. ☐ ☐ Is each student with a disability paid according to his/her own individual productivity?

28. ☐ ☐ Are students aware of the piece rate which applies to each job?

29. ☐ ☐ Is an accurate count of each student's production taken recorded each day?

30. ☐ ☐ When determining commensurate hourly rates, are all factors other than quantity and quality (e.g., additional supervisory costs, attendance, punctuality, attitude, hygiene, etc.) excluded from the computation?

31. ☐ ☐ Are initial evaluations of an hourly student's productivity made within the first month after employment begins?

32. ☐ ☐ Are evaluations made within one month after an hourly student changes jobs?

33. ☐ ☐ Are results of evaluations recorded and individual's wages adjusted no later than the first complete pay period following the evaluation?

34. ☐ ☐ Does the employer reimburse the student worker for hours worked on the "new" job if less than the commensurate had been received prior to the evaluation?

35. ☐ ☐ Are reviews and recordings of productivity conducted at least every six months for hourly paid workers?

36. ☐ ☐ Are reviews conducted in a manner & frequency to insure payment of commensurate wages? (ex: is worker fatigued? Has worker become familiar enough with the job? Is worker subject to conditions that result in less than normal productivity?)

37. ☐ ☐ Does each hourly evaluation contain a standard of productivity, that is what is expected of a nondisabled worker engaged in similar work?

38. ☐ ☐ Is individual doing the hourly review familiar with the standard of productivity?

39. ☐ ☐ Does each review also contain name & title of reviewer, date & time of review, and name of person being reviewed?

40. ☐ ☐ Are pay rate changes made on the basis of the evaluations?

41. ☐ ☐ Has student with disabilities (parent/guardian as appropriate) been notified orally and in writing of his/her hourly rate of pay?

42. ☐ ☐ Are all hourly rates based on prevailing wages paid to experienced nondisabled workers doing similar work?

43. ☐ ☐ Are all prevailing wages equal to minimum wage or greater?

44. ☐ ☐ Does the employer have a current special minimum wage certificate?

45. ☐ ☐ Are renewal applications filed before the expiration date of the last certificate?

46. ☐ ☐ Does the employer keep copies of all applications sent to the Wage-Hour Division?

47. ☐ ☐ If employer has a SCA wage determination, are full fringe benefits paid to each worker with a disability for hours worked on the covered SCA contract?

48. ☐ ☐ Is student disabled for the work performed?

49. ☐ ☐ Does ongoing documentation exist to substantiate the student is still disabled for the work performed?

Appendix E: Examples of DOL Application Forms

APPENDIX E

EXAMPLES OF DOL APPLICATION FORMS

U.S. Department of Justice
Immigration and Naturalization Service

2035 North Central Ave.
Phoenix, AZ 85004

OMB No. 1115-0136
Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. ANTI-DISCRIMINATION NOTICE. It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification.
To be completed and signed by employee at the time employment begins

Print Name: Last	First	Middle Initial	Maiden Name
Address *(Street Name and Number)*		Apt. #	Date of Birth *(month/day/year)*
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):
☐ A citizen or national of the United States
☐ A Lawful Permanent Resident (Alien # A ________
☐ An alien authorized to work until ___/___/___
(Alien # or Admission # ________

Employee's Signature
Date *(month/day/year)*

Preparer and/or Translator Certification. *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature
Print Name
Address *(Street Name and Number, City, State, Zip Code)*
Date *(month/day/year)*

Section 2. Employer Review and Verification.
To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C as listed on the reverse of this form and record the title, number and expiration date, if any, of the document(s)

	List A	OR	List B	AND	List C
Document title:	________		________		________
Issuing authority:	________		________		________
Document #:	________		________		________
Expiration Date *(if any)*:	___/___/___		___/___/___		___/___/___
Document #:	________				
Expiration Date *(if any)*:	___/___/___				

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* ___/___/___ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment).

Signature of Employer or Authorized Representative
Print Name
Title
Business or Organization Name
Address *(Street Name and Number, City, State, Zip Code)*
Date *(month/day/year)*

Section 3. Updating and Reverification.
To be completed and signed by employer

A. New Name *(if applicable)*
B. Date of rehire *(month/day/year) (if applicable)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.

Document Title: ________ Document #: ________ Expiration Date (if any): ___/___/___

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative
Date *(month/day/year)*

Form I-9 (Rev. 11-21-91) N

9

with Disabilities at Special Minimum Wages

Employment Standards Administration
Wage and Hour Division

[illegible]is is an application for the authority to employ workers with disabilities at special minimum wage rates under the Fair [illegible]r Standards Act (FLSA), Walsh-Healey Public Contracts Act (PCA), or Service Contract Act (SCA). Please submit one [illegible]y of the completed form and any attachments to the address shown above. Retain a completed copy for your records. A certificate may not be granted unless a properly completed application has been received and approved. 29 U.S.C. 201, et. seq.

OMB No.: 1215-0005
Expires: 06-30-93

FOR OFFICE USE ONLY

Certificate Number ______
Effective Date __/__/__
Expiration Date __/__/__
Print Certificate: Yes ☐ No ☐
RO ______ AO ______
REMARKS: ______ EMPLOYEES ______

1. This is a request for authority to employ workers with disabilities for:
   - A. ☐ Work Center (Sheltered Workshop)
     - ☐ Hospital/Residential Care Facility (Patient Workers)
     - ☑ Business Establishment (Special Worker)
   - B. Check One:
     - ☑ Initial application (Complete all items)
     - ☐ Renewal application (Please make any necessary corrections to reprinted information.)
   - C. ☐ Request for Temporary Authority by State Vocational Rehabilitation Agency or Veterans Administration

2. Name of Employer: ALL AMERICAN HIGH SCHOOL
(Workshop, Hospital/Institution, Business, School Providing Placement)
Street Address: 1234 Whatever Avenue
Mailing Address (if different than street address): ______
City: Anytown County: Anycounty
State: AZ ZIP Code: 85000
[illegible]phone: (602) 123-4567

3. List the name and address(es) of all branch establishments, (BR) supported employment sites (SE), or school work experience program sites (SWEP) to be covered by this certificate. If you are making an initial application (no previous authority), enter the number of workers expected to be employed in each program. If you are providing renewal information, list the number of workers in the specific program areas on the last day of the most recent representative quarter.

Attach additional sheets if necessary.

(BR, SE, or SWEP)	NAME & ADDRESS OF SITE	NUMBER OF WORKERS
SWEP	Burger Food Mart (see attached for addresses)	3
SWEP	ABC Pet Stores	3
SWEP	XYZ Nursery	3
SWEP	Bayville Market	3

[illegible] Parent Organization if different from that listed in (2).
Name: Phoenix-Tucson Union School Dist.
Address: 890 Eezee St., Anytown, AZ 85000
Check here if mail is to be sent to parent organization rather than #2. ☐

5. Status: (check one)
   - ☐ Public (State or local government) (PU)
   - ☐ Private, For Profit (PP)
   - ☐ Private, Not For Profit (PN)
   - ☒ Other SWEP

6. Do you manufacture items for the Federal Government under PCA? ☐ Yes ☑ No

   Do you perform any services for the Federal Government under SCA? ☐ Yes ☑ No

7. Primary disability group employed (check one):

☐ Mental Retardation (MR)
☐ Mental Illness (MI)
☐ Visual impairment (VI)
☐ Hearing impairment (HI)
☐ Alcoholism (AL)
☐ Drug Addiction (DA)
☐ Neuromuscular (NM)
☐ General - No primary group (GI)
☐ Age Related (AR)
☑ Developmental Disability (DD) Specify: ______
☐ Other (OT) Specify: ______

Public Burden Statement

We estimate that it will take an average of 45 minutes per response to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including [illegible]ggestions for reducing this burden, send them to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 [illegible]nstitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0005), Washington, D.C. 20503.

Form WH-226-MIS
Rev. Aug. 1990

8. Estimated number of workers with a disability employed during the fiscal year ending (Date) 6/30/95 under this certificate is 20. (The number of workers should include all locations covered by this certificate.)

WAGE PAYMENT DETERMINATION

[illegible] PREVAILING WAGE DETERMINATION

[illegible]se provide the following information on the four largest current contracts whether the workers with disabilities are paid an hourly rate or a piece rate. The prevailing rate should reflect the rate paid to experienced nondisabled workers in the vicinity for work utilizing similar methods and equipment. If more than 3 sources were used, attach an additional sheet headed "Prevailing Wage Determination" and provide the information obtained from these sources. (Section 14(c)(2)(B) and Part 525.10.)

Description of Work (e.g. collating, hand assembly, janitorial)	Sources (Name of Firm and Person Contacted)	Date of Contact	Prevailing Wage Provided by Source	Prevailing Wage Determined by Applicant
food service	1. Burger FOOD MART			5.25
	2. Diane Love, Reg. Mgr	8/30/94	5.25	
	3.			
clean cages, feed pets	1. ABC Pet Stores, Inc			4.75
	2. Laura Reese, Owner	8/30/94	4.75	
	3.			
water plants, light janitorial	1. XYZ Nursery	9/7/94	4.89	4.89
	2. DL Ruiz, Gen. Mgr			
	3.			
bagger, [illegible]helf stocker	1. Bayville Market	7/1/94	6.00	6.00
	2. LD Luuv, Store			
	3. Personnel			

10. HOURLY RATES

a. How many workers with disabilities employed under the terms of this certificate are paid an hourly rate? 15 (If the answer is 0, go on to question 11.) How frequently do you rate/evaluate each worker's productivity? 3-4 months

see attached *

b. Attach to this application productivity rating/evaluation forms for three currently employed workers with disabilities who are paid hourly rates. Include all material relating to the evaluation which shows the disabled workers' individual productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality and quantity of work in the vicinity.

11. PIECE RATES

a. How many workers with disabilities employed under the terms of this certificate are paid piece rates? 5 (If the answer is 0, go on to question 12.)

attached *

b. Please provide the following information about the four largest current contracts on which workers with disabilities are paid piece rates and attach supporting time studies or work measurements.

Description of Work (e.g. delabel cones)	Prevailing Wage Determined for this Job (Expressed in a Rate Per Hour)	Standard Productivity (Units/Hour)	Piece Rate Paid to Workers (Rate Per Unit)
folding boxes	5.25	300	.0175

INSTRUCTION SHEET

GENERAL INSTRUCTIONS

This application is to be used to apply for a subminimum wage certificate under the Fair Labor Standards Act (FLSA), the Walsh-Healey Public Contracts Act (PCA), and the Service Contract Act (SCA). Payment of subminimum wages to workers with disabilities is authorized only under certificates issued under section 14(c) of FLSA.

2. This report is authorized under section 14(c) of FLSA. While completion of this form is voluntary, authority to pay less than the applicable minimum wage will not be granted unless a properly completed application is submitted.

3. Complete one copy of this form and send to the Wage and Hour Division. Keep a photocopy for your records.

4. Do not submit an application for each branch establishment. List the names of branch establishments in the space provided in Item 3. Enclaves, supported employment work sites, and school work experience sites should also be reported in item 3. **A form WH-226-A must be completed for each site where workers with disabilities are employed.**

SPECIAL INSTRUCTIONS FOR SCHOOL WORK EXPERIENCE PROGRAMS

The rehabilitation counselor or coordinating official of the school may submit a group application covering all of the students with disabilities and all of the employers participating in a school work experience program. Employers are responsible for compliance with all applicable child labor laws, minimum wage standards, certificate and recordkeeping requirements. The students participating in a school work experience program must be paid commensurate wage rates based upon the students' productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, quantity of work in the vicinity in which the students are employed. Complete all items except numbers 6 and 12.

Item 1(A) - Check "Business Establishment (Special Worker)"
Item 2 - Enter identifying information for the school
Item 4 - Enter School District information
Item 5 - Check "Other" and enter "SWEP."
Items 9 and 11 - Complete for the four types of work in which the greatest number of students with disabilities are employed. If fewer than four types of jobs exist, enter n/a in the "Description of Work" blocks which aren't used.
Item 14 - Must be signed by the counselor or coordinating official of the school

ECIAL INSTRUCTIONS FOR VOCATIONAL REHABILITATION COUNSELORS OR VETERANS ADMINISTRATION TRAINING FFICERS

Complete all items except #6.

Item 1(A) - Check "Business Establishment (Special Worker)"
Item 1(C) - Check
Item 2 - Enter name and location of employer where workers with disabilities are to be placed.
Item 4 - Enter the name and address of the Veterans Administration Office or State Vocational Rehabilitation agency which is seeking temporary authority or an extension
Item 5 - Check "Other" and enter the type of business in which the worker with a disability is being placed.
Items 9 and 11 - Complete for the worksites where the workers with disabilities will be employed.
Item 14 - Must be signed by the Vocational Rehabilitation Counselor or Veterans Administration Training Officer.

*U.S. GPO:1990-282-114/25356

12. TEMPORARY AUTHORITY

(FOR USE BY VOCATIONAL REHABILITATION COUNSELORS AND VETERANS ADMINISTRATION TRAINING OFFICERS ONLY)

a. ☐ Temporary Certificate issued by a rehabilitation agency

From __/__/__ To __/__/__

b. ☐ Extension of Temporary Certificate
Check one ☐ Do not extend.
☐ Extend as described below.
(May not be for more than 12 months.)

From __/__/__ To __/__/__

13. REPRESENTATIONS AND WRITTEN ASSURANCES

I certify that I have read this form and, to the best of my knowledge and belief, all answers and information given in the application and attachments are true; that the representations set forth in support of this application to obtain or continue the authorization to pay workers with disabilities at subminimum wage rates are true; and that the authorization, if issued or continued, is subject to revocation in accordance with the provisions of 29 CFR 525.

I represent that as set forth in the regulations governing the employment of workers with disabilities, the following conditions exist (or will exist for initial applicants):

(1) workers employed (or who will be employed) under the authority in 29 CFR 525 are disabled for the work to be performed;

(2) wage rates paid (or which will be paid) to workers with disabilities under the authority in 29 CFR 525 are commensurate with those paid nondisabled experienced workers in industry in the vicinity for essentially the same type, quality, and quantity of work;

(3) the operations are (or will be) in compliance with the FLSA, PCA, SCA, and Contract Work Hours and Safety Standards Act, an overtime statute for federal contract work;

(4) no deductions will be made from the commensurate wages earned by a patient worker to cover the cost of room, board or other services provided by the facility;

(5) records required under 29 CFR Part 525 with respect to documentation of disability, productivity, time studies or work measurements, and prevailing wage surveys will be maintained.

urther, I certify that:

(1) the wage rates of all hourly-rated employees paid in accordance with section 14(c) of FLSA will be reviewed at least every six months, and

(2) wages paid to all employees under FLSA section 14(c) will be adjusted at periodic intervals at least once a year to reflect changes in the prevailing wage paid to experienced nondisabled workers employed in the vicinity for essentially the same type of work.

14. SIGNATURE OF AUTHORIZED REPRESENTATIVE

Name (Print or Type) William Clinton Title Director, Special Educ.

Signature William Clinton Date 9/15/94

Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages

U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division

OMB No.: 1215-0005
Expires: 06-30-93

INSTRUCTIONS FOR COMPLETING FORM WH-226A-MIS

List only those workers with disabilities who earn less than the statutory minimum wage or SCA wage determination rate.

Item 2 — List each worker with a disability engaged in covered work in the worksite regardless of the amount of time spent in the program or the individual's earnings.

Item 3 — For workers paid hourly wage rates, list the rate or rates paid at the end of the fiscal quarter. For example: Jane Smith, quality control, $3.00.

For workers paid by piece rates, list the average earnings per hour. Average earnings are computed by dividing the total earnings of the individual worker by the number of hours worked during that fiscal quarter. For example, John Jones earned $600.00 during the quarter ending 6/30/–. He worked 300 hours. His average earnings per hour are $2.00.

Item 4 — Clearly identify the work performed by the workers with disabilities. For example, truck helper, assembler, machine operator, janitor, etc.

Important: Name and address of worksite should appear in Item 2 or Item 3 on the WH-226-MIS. When completing Items 2 through 4, please use information from your most recent representative fiscal quarter. Attach additional sheets if necessary.

1. Name and Address of Work Site: Burger Food Mart, 300 W. Congress, Morenci, AZ 85002

SCA work performed at this site? ☐

2. Name of workers with disabilities and primary disability (e.g., John Jones - cerebral palsey)	3. Average earnings per hour	4. Type of work
John Jones, DD cerebral palsey	$1.90	counter service
Mary Smith, DD	$2.95	parking lot cleanup

Public Burden Statement

We estimate that it will take an average of 45 minutes per response to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0005), Washington, D.C. 20503.

Form WH-226A
Rev. Aug. 1990

Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages

U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division

OMB No.: 1215-0005
Expires: 06-30-93

INSTRUCTIONS FOR COMPLETING FORM WH-226A-MIS

List only those workers with disabilities who earn less than the statutory minimum wage or SCA wage determination rate.

Item 2	List each worker with a disability engaged in covered work in the worksite regardless of the amount of time spent in the program or the individual's earnings.
Item 3	For workers paid hourly wage rates, list the rate or rates paid at the end of the fiscal quarter. For example: Jane Smith, quality control, $3.00. For workers paid by piece rates, list the average earnings per hour. Average earnings are computed by dividing the total earnings of the individual worker by the number of hours worked during that fiscal quarter. For example, John Jones earned $600.00 during the quarter ending 6/30/–. He worked 300 hours. His average earnings per hour are $2.00.
Item 4	Clearly identify the work performed by the workers with disabilities. For example, truck helper, assembler, machine operator, janitor, etc.

Important: Name and address of worksite should appear in Item 2 or Item 3 on the WH-226-MIS. When completing Items 2 through 4, please use information from your most recent representative fiscal quarter. Attach additional sheets if necessary.

1. Name and Address of Work Site: XYZ Nursery, 129 E. Bayside, Chandler, AZ 85003

SCA work performed at this site? ☐

2. Name of workers with disabilities and primary disability (e.g., John Jones - cerebral palsey)	3. Average earnings per hour	4. Type of work
Jane Doe, autism	$3.75	water + re-pot plants
Mike Jones, DD	$3.75	water plants, empty trash

Public Burden Statement

We estimate that it will take an average of 45 minutes per response to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0005), Washington, D.C. 20503.

Form WH-226A
Rev. Aug. 1990

Application for Authority to Employ Workers with Disabilities at Special Minimum Wages

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

This is an application for the authority to employ workers with disabilities at special minimum wage rates under the Fair Labor Standards Act (FLSA), Walsh-Healey Public Contracts Act (PCA), or Service Contract Act (SCA). Please submit one copy of the completed form and any attachments to the address shown above. Retain a completed copy for your records. A certificate may not be granted unless a properly completed application has been received and approved. 29 U.S.C. 201, et. seq.

OMB No.: 1215-0005
Expires: 06-30-93

1. This is a request for authority to employ workers with disabilities for:

A. ☐ Work Center (Sheltered Workshop)
☐ Hospital/Residential Care Facility (Patient Workers)
☒ Business Establishment (Special Worker)

B. Check One:
☒ Initial application (Complete all items)
☐ Renewal application (Please make any necessary corrections to reprinted information.)

C. ☐ Request for Temporary Authority by State Vocational Rehabilitation Agency or Veterans Administration

FOR OFFICE USE ONLY

Certificate Number ______
Effective Date / /
Expiration Date / /
Print Certificate: Yes ☐ No ☐
RO ______ AO ______
REMARKS: ______ EMPLOYEES ______

2. Name of Employer: PIZZA JOINT, INC.
(Workshop, Hospital/Institution, Business, School Providing Placement)
Street Address: 1651 E. Father Road
Mailing Address (if different than street address): P.O. Box 007
City: Mother County: Brothers
State: AZ ZIP Code: 85000

3. Telephone: (602) 123-4567

~~4. Parent Organization if different from that listed in (2).~~ Placing School:
Name: All American High School, Attn: Diane Ruiz - Transition
Address: 1234 Whatever, Anytown, AZ 85000
Phone: (602) 123-4567
Check here if mail is to be sent to parent organization rather than #2. ☒

3. List the name and address(es) of all branch establishments, (BR) supported employment sites (SE), or school work experience program sites (SWEP) to be covered by this certificate. If you are making an initial application (no previous authority), enter the number of workers expected to be employed in each program. If you are providing renewal information, list the number of workers in the specific program areas on the last day of the most recent representative quarter.

Attach additional sheets if necessary.

(BR, SE, or SWEP)	NAME & ADDRESS OF SITE	NUMBER OF WORKERS
BR	Pizza Joint, Inc 9781 Hollow Road Mother, AZ 85001	3

5. Status: (check one)
☐ Public (State or local government) (PU)
☒ Private, For Profit (PP)
☐ Private, Not For Profit (PN)
☐ Other ______

6. Do you manufacture items for the Federal Government under PCA? ☐ Yes ☒ No

Do you perform any services for the Federal Government under SCA? ☐ Yes ☒ No

7. Primary disability group employed (check one):

☐ Mental Retardation (MR)
☐ Mental Illness (MI)
☐ Visual Impairment (VI)
☐ Hearing Impairment (HI)
☐ Alcoholism (AL)
☐ Drug Addiction (DA)
☐ Neuromuscular (NM)
☐ General - No primary group (GI)
☐ Age Related (AR)
☒ Developmental Disability (DD) Specify: ______
☐ Other (OT) Specify: ______

Public Burden Statement

We estimate that it will take an average of 45 minutes per response to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0005), Washington, D.C. 20503.

Form WH-226-MIS
Rev. Aug. 1990

8. Estimated number of workers with a disability employed during the fiscal year ending (Date) 6/30/95 under this certificate is 4. (The number of workers should include all locations covered by this certificate.)

WAGE PAYMENT DETERMINATION

PREVAILING WAGE DETERMINATION

ase provide the following information on the four largest current contracts whether the workers with disabilities are paid an hourly rate or a piece rate. The prevailing rate should reflect the rate paid to experienced nondisabled workers in the vicinity for work utilizing similar methods and equipment. If more than 3 sources were used, attach an additional sheet headed "Prevailing Wage Determination" and provide the information obtained from these sources. (Section 14(c)(2)(B) and Part 525.10.)

Description of Work (e.g. collating, hand assembly, janitorial)	Sources (Name of Firm and Person Contacted)	Date of Contact	Prevailing Wage Provided by Source	Prevailing Wage Determined by Applicant
box folding	1. Pizza Joint, Inc			4.90
	2. Laura Hotline,	6/15/94	4.90	
	3. Owner			
Collating flyers, coupons	1. Pizza Joint, Inc.	6/15/94	4.40	4.40
	2. Laura Hotline,			
	Owner			
cashier	1. " " "	6/15/94	6.00	6.00
	2. " "			
	3. "			
	1.			
	2.			
	3.			

10. HOURLY RATES

a. How many workers with disabilities employed under the terms of this certificate are paid an hourly rate? 2 (If the answer is 0, go on to question 11.) How frequently do you rate/evaluate each worker's productivity? 6 weeks

b. Attach to this application productivity rating/evaluation forms for three currently employed workers with disabilities who are paid hourly rates. Include all material relating to the evaluation which shows the disabled workers' individual productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality and quantity of work in the vicinity.

11. PIECE RATES

a. How many workers with disabilities employed under the terms of this certificate are paid piece rates? 2 (If the answer is 0, go on to question 12.)

b. Please provide the following information about the four largest current contracts on which workers with disabilities are paid piece rates and attach supporting time studies or work measurements.

Description of Work (e.g. delabel cones)	Prevailing Wage Determined for this Job (Expressed in a Rate Per Hour)	Standard Productivity (Units/Hour)	Piece Rate Paid to Workers (Rate Per Unit)
box folding	4.90	300	.0164

235

INSTRUCTION SHEET

GENERAL INSTRUCTIONS

This application is to be used to apply for a subminimum wage certificate under the Fair Labor Standards Act (FLSA), the Walsh-Healey Public Contracts Act (PCA), and the Service Contract Act (SCA). Payment of subminimum wages to workers with disabilities is authorized only under certificates issued under section 14(c) of FLSA.

2. This report is authorized under section 14(c) of FLSA. While completion of this form is voluntary, authority to pay less than the applicable minimum wage will not be granted unless a properly completed application is submitted.

3. Complete one copy of this form and send to the Wage and Hour Division. Keep a photocopy for your records.

4. Do not submit an application for each branch establishment. List the names of branch establishments in the space provided in item 3. Enclaves, supported employment work sites, and school work experience sites should also be reported in item 3. **A form WH-226-A must be completed for each site where workers with disabilities are employed.**

SPECIAL INSTRUCTIONS FOR SCHOOL WORK EXPERIENCE PROGRAMS

The rehabilitation counselor or coordinating official of the school may submit a group application covering all of the students with disabilities and all of the employers participating in a school work experience program. Employers are responsible for compliance with all applicable child labor laws, minimum wage standards, certificate and recordkeeping requirements. The students participating in a school work experience program must be paid commensurate wage rates based upon the students' productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, quantity of work in the vicinity in which the students are employed. Complete all items except numbers 6 and 12.

Item 1(A) - Check "Business Establishment (Special Worker)"
Item 2 - Enter identifying information for the school
Item 4 - Enter School District information
Item 5 - Check "Other" and enter "SWEP."
Items 9 and 11 - Complete for the four types of work in which the greatest number of students with disabilities are employed. If fewer than four types of jobs exist, enter n/a in the "Description of Work" blocks which aren't used.
Item 14 - Must be signed by the counselor or coordinating official of the school

ECIAL INSTRUCTIONS FOR VOCATIONAL REHABILITATION COUNSELORS OR VETERANS ADMINISTRATION TRAINING FICERS

Complete all items except #6.

Item 1(A) - Check "Business Establishment (Special Worker)"
Item 1(C) - Check
Item 2 - Enter name and location of employer where workers with disabilities are to be placed.
Item 4 - Enter the name and address of the Veterans Administration Office or State Vocational Rehabilitation agency which is seeking temporary authority or an extension
Item 5 - Check "Other" and enter the type of business in which the worker with a disability is being placed.
Items 9 and 11 - Complete for the worksites where the workers with disabilities will be employed.
Item 14 - Must be signed by the Vocational Rehabilitation Counselor or Veterans Administration Training Officer.

12. TEMPORARY AUTHORITY	**(FOR USE BY VOCATIONAL REHABILITATION COUNSELORS AND VETERANS ADMINISTRATION TRAINING OFFICERS ONLY)**
a. ☐ Temporary Certificate issued by a rehabilitation agency	b. ☐ Extension of Temporary Certificate Check one ☐ Do not extend. ☐ Extend as described below. (May not be for more than 12 months.)
From __/__/__ To __/__/__	From __/__/__ To __/__/__

13. REPRESENTATIONS AND WRITTEN ASSURANCES

I certify that I have read this form and, to the best of my knowledge and belief, all answers and information given in the application and attachments are true; that the representations set forth in support of this application to obtain or continue the authorization to pay workers with disabilities at subminimum wage rates are true; and that the authorization, if issued or continued, is subject to revocation in accordance with the provisions of 29 CFR 525.

I represent that as set forth in the regulations governing the employment of workers with disabilities, the following conditions exist (or will exist for initial applicants):

(1) workers employed (or who will be employed) under the authority in 29 CFR 525 are disabled for the work to be performed;

(2) wage rates paid (or which will be paid) to workers with disabilities under the authority in 29 CFR 525 are commensurate with those paid nondisabled experienced workers in industry in the vicinity for essentially the same type, quality, and quantity of work;

(3) the operations are (or will be) in compliance with the FLSA, PCA, SCA, and Contract Work Hours and Safety Standards Act, an overtime statute for federal contract work;

(4) no deductions will be made from the commensurate wages earned by a patient worker to cover the cost of room, board or other services provided by the facility;

(5) records required under 29 CFR Part 525 with respect to documentation of disability, productivity, time studies or work measurements, and prevailing wage surveys will be maintained.

Further, I certify that:

(1) the wage rates of all hourly-rated employees paid in accordance with section 14(c) of FLSA will be reviewed at least every six months, and

(2) wages paid to all employees under FLSA section 14(c) will be adjusted at periodic intervals at least once a year to reflect changes in the prevailing wage paid to experienced nondisabled workers employed in the vicinity for essentially the same type of work.

14. SIGNATURE OF AUTHORIZED REPRESENTATIVE

Name (Print or Type) Laura Hotline Title Owner

Signature Date 6/15/94

Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages

U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division

OMB No.: 1215-0005
Expires: 06-30-93

INSTRUCTIONS FOR COMPLETING FORM WH-226A-MIS

List only those workers with disabilities who earn less than the statutory minimum wage or SCA wage determination rate.

Item 2 List each worker with a disability engaged in covered work in the worksite regardless of the amount of time spent in the program or the individual's earnings.

Item 3 For workers paid hourly wage rates, list the rate or rates paid at the end of the fiscal quarter. For example: Jane Smith, quality control, $3.00.

For workers paid by piece rates, list the average earnings per hour. Average earnings are computed by dividing the total earnings of the individual worker by the number of hours worked during that fiscal quarter. For example, John Jones earned $600.00 during the quarter ending 6/30/--. He worked 300 hours. His average earnings per hour are $2.00.

Item 4 Clearly identify the work performed by the workers with disabilities. For example, truck helper, assembler, machine operator, janitor, etc.

Important: Name and address of worksite should appear in Item 2 or Item 3 on the WH-226-MIS. When completing Items 2 through 4, please use information from your most recent representative fiscal quarter. Attach additional sheets if necessary.

1. Name and Address of Work Site: Pizza Joint, Inc, 9781 Hollow, Chandler, AZ 85003

SCA work performed at this site? ☐

2. Name of workers with disabilities and primary disability (e.g., John Jones - cerebral palsey)	3. Average earnings per hour	4. Type of work
Jane Doe, autism	$2.75	fold boxes
Mike Jones, DD	$1.75	food prep

Public Burden Statement

We estimate that it will take an average of 45 minutes per response to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0005), Washington, D.C. 20503.

Form WH-226A
Rev. Aug. 1990

Application for Authority to Employ Workers with Disabilities at Special Minimum Wages

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

is is an application for the authority to employ workers with disabilities at special minimum wage rates under the Fair or Standards Act (FLSA), Walsh-Healey Public Contracts Act (PCA), or Service Contract Act (SCA). Please submit one py of the completed form and any attachments to the address shown above. Retain a completed copy for your records. A certificate may not be granted unless a properly completed application has been received and approved. 29 U.S.C. 201, et. seq.

OMB No.: 1215-0005
Expires: 06-30-93

1. This is a request for authority to employ workers with disabilities for:
   - A. ☐ Work Center (Sheltered Workshop)
     - ☐ Hospital/Residential Care Facility (Patient Workers)
     - ☐ Business Establishment (Special Worker)
   - B. Check One:
     - ☐ Initial application (Complete all items)
     - ☐ Renewal application (Please make any necessary corrections to reprinted information.)
   - C. ☐ Request for Temporary Authority by State Vocational Rehabilitation Agency or Veterans Administration

2. Name of Employer: ______
(Workshop, Hospital/Institution, Business, School Providing Placement)

Street Address: ______

Mailing Address (if different than street address): ______

City: ______ County: ______

State: ______ ZIP Code: ______

ephone: ______

. Parent Organization if different from that listed in (2).

Name: ______

Address: ______

Check here if mail is to be sent to parent organization rather than #2. ☐

5. Status: (check one)
   - ☐ Public (State or local government) (PU)
   - ☐ Private, For Profit (PP)
   - ☐ Private, Not For Profit (PN)
   - ☐ Other ______

FOR OFFICE USE ONLY

Certificate Number ______
Effective Date __/__/__
Expiration Date __/__/__
Print Certificate: Yes ☐ No ☐
RO ______ **AO** ______
REMARKS: ______ **EMPLOYEES** ______

3. List the name and address(es) of all branch establishments, (BR) supported employment sites (SE), or school work experience program sites (SWEP) to be covered by this certificate. If you are making an initial application (no previous authority), enter the number of workers expected to be employed in each program. If you are providing renewal information, list the number of workers in the specific program areas on the last day of the most recent representative quarter.

Attach additional sheets if necessary.

(BR, SE, or SWEP)	NAME & ADDRESS OF SITE	NUMBER OF WORKERS

6. Do you manufacture items for the Federal Government under PCA? ☐ Yes ☐ No

Do you perform any services for the Federal Government under SCA? ☐ Yes ☐ No

7. Primary disability group employed (check one):
   - ☐ Mental Retardation (MR)
   - ☐ Mental Illness (MI)
   - ☐ Visual impairment (VI)
   - ☐ Hearing impairment (HI)
   - ☐ Alcoholism (AL)
   - ☐ Drug Addiction (DA)
   - ☐ Neuromuscular (NM)
   - ☐ General - No primary group (GI)
   - ☐ Age Related (AR)
   - ☐ Developmental Disability (DD) Specify: ______
   - ☐ Other (OT) Specify: ______

Public Burden Statement

We estimate that it will take an average of 45 minutes per response to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including uggestions for reducing this burden, send them to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 onstitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0005), Washington, D.C. 20503.

Form WH-226-MIS
Rev. Aug. 1990

8. Estimated number of workers with a disability employed during the fiscal year ending (Date) _______________ under this certificate is _______________. (The number of workers should include all locations covered by this certificate.)

WAGE PAYMENT DETERMINATION

PREVAILING WAGE DETERMINATION

ase provide the following information on the four largest current contracts whether the workers with disabilities are paid an hourly rate or a piece rate. The prevailing rate should reflect the rate paid to experienced nondisabled workers in the vicinity for work utilizing similar methods and equipment. If more than 3 sources were used, attach an additional sheet headed "Prevailing Wage Determination" and provide the information obtained from these sources. (Section 14(c)(2)(B) and Part 525.10.)

Description of Work (e.g. collating, hand assembly, janitorial)	Sources (Name of Firm and Person Contacted)	Date of Contact	Prevailing Wage Provided by Source	Prevailing Wage Determined by Applicant
	1.			
	2.			
	3.			
	1.			
	2.			
	3.			
	1.			
	2.			
	3.			
	1.			
	2.			
	3.			

10. HOURLY RATES

a. How many workers with disabilities employed under the terms of this certificate are paid an hourly rate? __________ (If the answer is 0, go on to question 11.) How frequently do you rate/evaluate each worker's productivity? ________________

b. Attach to this application productivity rating/evaluation forms for three currently employed workers with disabilities who are paid hourly rates. Include all material relating to the evaluation which shows the disabled workers' individual productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality and quantity of work in the vicinity.

11. PIECE RATES

a. How many workers with disabilities employed under the terms of this certificate are paid piece rates? __________ (If the answer is 0, go on to question 12.)

b. Please provide the following information about the four largest current contracts on which workers with disabilities are paid piece rates and attach supporting time studies or work measurements.

Description of Work (e.g. delabel cones)	Prevailing Wage Determined for this Job (Expressed in a Rate Per Hour)	Standard Productivity (Units/Hour)	Piece Rate Paid to Workers (Rate Per Unit)

12. TEMPORARY AUTHORITY	**(FOR USE BY VOCATIONAL REHABILITATION COUNSELORS AND VETERANS ADMINISTRATION TRAINING OFFICERS ONLY)**
a. ☐ Temporary Certificate issued by a rehabilitation agency	b. ☐ Extension of Temporary Certificate Check one ☐ Do not extend. ☐ Extend as described below. (May not be for more than 12 months.)
From __/__/__ To __/__/__	From __/__/__ To __/__/__

13. REPRESENTATIONS AND WRITTEN ASSURANCES

I certify that I have read this form and, to the best of my knowledge and belief, all answers and information given in the application and attachments are true; that the representations set forth in support of this application to obtain or continue the authorization to pay workers with disabilities at subminimum wage rates are true; and that the authorization, if issued or continued, is subject to revocation in accordance with the provisions of 29 CFR 525.

I represent that as set forth in the regulations governing the employment of workers with disabilities, the following conditions exist (or will exist for initial applicants):

(1) workers employed (or who will be employed) under the authority in 29 CFR 525 are disabled for the work to be performed;

(2) wage rates paid (or which will be paid) to workers with disabilities under the authority in 29 CFR 525 are commensurate with those paid nondisabled experienced workers in industry in the vicinity for essentially the same type, quality, and quantity of work;

(3) the operations are (or will be) in compliance with the FLSA, PCA, SCA, and Contract Work Hours and Safety Standards Act, an overtime statute for federal contract work;

(4) no deductions will be made from the commensurate wages earned by a patient worker to cover the cost of room, board or other services provided by the facility;

(5) records required under 29 CFR Part 525 with respect to documentation of disability, productivity, time studies or work measurements, and prevailing wage surveys will be maintained.

urther, I certify that:

(1) the wage rates of all hourly-rated employees paid in accordance with section 14(c) of FLSA will be reviewed at least every six months, and

(2) wages paid to all employees under FLSA section 14(c) will be adjusted at periodic intervals at least once a year to reflect changes in the prevailing wage paid to experienced nondisabled workers employed in the vicinity for essentially the same type of work.

14. SIGNATURE OF AUTHORIZED REPRESENTATIVE

Name (Print or Type) ______________________ Title ______________________

Signature ______________________ Date ______________________

Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages

U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division

OMB No.: 1215-0005
Expires: 06-30-93

INSTRUCTIONS FOR COMPLETING FORM WH-226A-MIS

List only those workers with disabilities who earn less than the statutory minimum wage or SCA wage determination rate.

Item 2 List each worker with a disability engaged in covered work in the worksite regardless of the amount of time spent in the program or the individual's earnings.

Item 3 For workers paid hourly wage rates, list the rate or rates paid at the end of the fiscal quarter. For example: Jane Smith, quality control, $3.00.

For workers paid by piece rates, list the average earnings per hour. Average earnings are computed by dividing the total earnings of the individual worker by the number of hours worked during that fiscal quarter. For example, John Jones earned $600.00 during the quarter ending 6/30/–. He worked 300 hours. His average earnings per hour are $2.00.

Item 4 Clearly identify the work performed by the workers with disabilities. For example, truck helper, assembler, machine operator, janitor, etc.

Important: Name and address of worksite should appear in Item 2 or Item 3 on the WH-226-MIS. When completing Items 2 through 4, please use information from your most recent representative fiscal quarter. Attach additional sheets if necessary.

1. Name and Address of Work Site:

SCA work performed at this site? ☐

2. Name of workers with disabilities and primary disability (e.g., John Jones - cerebral palsey)	3. Average earnings per hour	4. Type of work

Public Burden Statement

We estimate that it will take an average of 45 minutes per response to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0005), Washington, D.C. 20503.

Form WH-226A
Rev. Aug. 1990

INSTRUCTION SHEET

GENERAL INSTRUCTIONS

[illegible] This application is to be used to apply for a subminimum wage certificate under the Fair Labor Standards Act (FLSA), the Walsh-Healey Public Contracts Act (PCA), and the Service Contract Act (SCA). Payment of subminimum wages to workers with disabilities is authorized only under certificates issued under section 14(c) of FLSA.

2. This report is authorized under section 14(c) of FLSA. While completion of this form is voluntary, authority to pay less than the applicable minimum wage will not be granted unless a properly completed application is submitted.

3. Complete one copy of this form and send to the Wage and Hour Division. Keep a photocopy for your records.

4. Do not submit an application for each branch establishment. List the names of branch establishments in the space provided in item 3. Enclaves, supported employment work sites, and school work experience sites should also be reported in item 3. **A form WH-226-A must be completed for each site where workers with disabilities are employed.**

SPECIAL INSTRUCTIONS FOR SCHOOL WORK EXPERIENCE PROGRAMS

The rehabilitation counselor or coordinating official of the school may submit a group application covering all of the students with disabilities and all of the employers participating in a school work experience program. Employers are responsible for compliance with all applicable child labor laws, minimum wage standards, certificate and recordkeeping requirements. The students participating in a school work experience program must be paid commensurate wage rates based upon the students' productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, quantity of work in the vicinity in which the students are employed. Complete all items except numbers 6 and 12.

Item 1(A) - Check "Business Establishment (Special Worker)"
Item 2 - Enter identifying information for the school
Item 4 - Enter School District information
Item 5 - Check "Other" and enter "SWEP."
Items 9 and 11 - Complete for the four types of work in which the greatest number of students with disabilities are employed. If fewer than four types of jobs exist, enter n/a in the "Description of Work" blocks which aren't used.
Item 14 - Must be signed by the counselor or coordinating official of the school

[illegible]ECIAL INSTRUCTIONS FOR VOCATIONAL REHABILITATION COUNSELORS OR VETERANS ADMINISTRATION TRAINING [illegible]FFICERS

Complete all items except #6.

Item 1(A) - Check "Business Establishment (Special Worker)"
Item 1(C) - Check
Item 2 - Enter name and location of employer where workers with disabilities are to be placed.
Item 4 - Enter the name and address of the Veterans Administration Office or State Vocational Rehabilitation agency which is seeking temporary authority or an extension
Item 5 - Check "Other" and enter the type of business in which the worker with a disability is being placed.
Items 9 and 11 - Complete for the worksites where the workers with disabilities will be employed.
Item 14 - Must be signed by the Vocational Rehabilitation Counselor or Veterans Administration Training Officer.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF FAIR LABOR STANDARDS
Washington, D.C. 20210

Form Approved
OMB No. 44-R0382

APPLICATION FOR A CERTIFICATE TO EMPLOY LEARNERS AT SUBMINIMUM WAGES

(In industries covered by supplemental industry learner regulations)

THIS IS AN APPLICATION ONLY AND NOT A PERMIT TO EMPLOY LEARNERS AT LESS THAN THE STATUTORY MINIMUM WAGE. REGULATIONS, PART 522, GOVERNS SUCH EMPLOYMENT. SECTION 522.5 SETS FORTH THE CONDITIONS GOVERNING THE ISSUANCE OF A LEARNER CERTIFICATE.

FAILURE TO FOLLOW INSTRUCTIONS OR OMISSION OF DATA MAY CAUSE THE RETURN OF THE APPLICATION.

Prepare the form in triplicate. Send the original to the address shown above. A copy must be sent to the Employment Standards Administration Regional Office for your area. The remaining copy is for your files. Post the accompanying "Notice of Filing Application" in a conspicuous place in your plant. Additional copies will be furnished at your request.

PART I. INFORMATION REQUIRED OF ALL APPLICANTS

1. a. Name and address, including ZIP Code, of plant for which application is made:

b. Other name(s) used in past 2 years:

☐ None

c. Name and address of parent company:

☐ No parent company

2. Date operations began or will begin at present location:

3. a. Is your plant operating under a trade union agreement? ☐ Yes ☐ No

b. If yes, give name of union:

4. a. SPECIFIC PRODUCT(S) MANUFACTURED *(See supplemental instructions)*	PERCENTAGE OF TOTAL PRODUCTION

b. Are learners to be employed at subminimum wages on all products listed in item 4? ☐ Yes ☐ No
If "No", mark with an asterisk (*) the product(s) on which such learners are to be employed.

5. EFFORTS TO RECRUIT EXPERIENCED WORKERS IN THE OCCUPATION(S) FOR WHICH LEARNERS ARE REQUESTED. Indicate efforts made to recruit experienced workers in the occupation(s) for which learners are requested. *You must submit with this application written evidence from the local public employment service office serving your locality that an order for experienced workers was placed with that office not more than 15 days prior to the date of this application.*
Date of enclosed written evidence from the local public employment service office ____________.

OTHER RECRUITING EFFORTS (Describe)	DATE	NUMBER OF EXPERIENCED WORKERS	
		Referred or applying	Hired

6. **HIRING OF LEARNERS.** Include only learners at subminimum wages. If no learners have been hired at subminimum wages, indicate "None" in column B.

LEARNER OCCUPATIONS *(List occupations in which learners have been employed at subminimum wages or for which a certificate authorizing such wages is requested.)*	LEARNERS HIRED IN LAST 12 MONTHS			
	Total number hired at subminimum wages	Number having completed authorized learning period	Number trained and still employed at the statutory minimum wage or more	Number still being trained at subminimum wages
A	B	C	D	E
(1)				
(2)				
(3)				
(4)				
(5)				

7. **MONTHLY EMPLOYMENT.** Enter data for the payroll period including the 12th of each of the 12 most recent months for which data are available. For line a include working foremen and and all nonsupervisory workers engaged in fabricating, processing, assembling, inspecting, receiving, packing, shipping, and other services closely associated with production operations. For line b show only the learners paid less than the statutory minimum wage in effect during that period.

MONTH *(Enter Year)* →	JAN. 19	FEB. 19	MAR. 19	APR. 19	MAY 19	JUNE 19	JULY 19	AUG. 19	SEPT. 19	OCT. 19	NOV. 19	DEC. 19
a. NUMBER OF PRODUCTION & RELATED WORKERS (Including learners)												
b. NUMBER OF LEARNERS AT SUBMINIMUM WAGES												

8. **EMPLOYMENT OF ALL PRODUCTION AND RELATED WORKERS EXCEPT LEARNERS PAID SUBMINIMUM WAGES**

(See supplemental instructions)

OCCUPATIONS *(List same occupations as in item 6)*	NUMBER OF WORKERS ON RECENT PAYROLL *(Do not count learners paid subminimum wages)*	AVERAGE STRAIGHT-TIME HOURLY EARNINGS *(Including make-up)*		NUMBER OF WORKERS PAID MAKE-UP TO STATUTORY MINIMUM WAGE ON MOST RECENT PAYROLL
		One year ago	Recent payroll	
A	B	C	D	E
(1)		$	$	
(2)				
(3)				
(4)				
(5)				
(6) OTHER PRODUCTION & RELATED OCCUPATIONS		XXXXXXXX	XXXXXXXX	XXXXXXXX
TOTAL - ALL PRODUCTION & RELATED WORKERS		$	$	

9. TYPE OF APPLICATION *(Place a check mark (✓) in the appropriate box(es))*

A. ☐ Normal Labor Turnover Purposes. If checked, what is the maximum number of learners you expect to employ at subminimum wages on any one day during the next 12 months ?

B. ☐ New Plant or Expanding Plant Purposes. If checked, you must also complete Part II.

b. ☐ New Plant or Expanding Plant Purposes. If checked, you must also complete Part II.

PART II. INFORMATION REQUIRED FOR NEW OR EXPANDING PLANTS

[illegible]s Part must be completed if you are requesting learners at subminimum wages to staff a new plant or expand existing operations. Do not complete this Part if your are requesting learners at subminimum wages only for normal labor turnover purposes.

10. a. Expansion is due to:

b. Do you plan to add a new shift? ☐ Yes ☐ No

c. How many learners do you plan to hire immediately?

d. How many learners do you plan to have in your employ at subminimum wages on any one workday?

11. INFORMATION ON MACHINES

TYPE OF MACHINE	OPERATORS PER MACHINE	NUMBER OF MACHINES NOW IN USE	MACHINES TO BE USED BY LEARNERS		
			New machines *(number)*	Idle machines	
				Number	Length of time idle *(months)*

12. RELOCATION OF PRODUCTION. Are you moving from another plant of your company *(or closely related company)* in another location, or are you transferring production from such plant, or have you recently so moved or transferred production? ☐ Yes ☐ No
If yes, attach a signed statement giving information required in section 522.3(e) of the Regulations, Part 522

PART III. REPRESENTATIONS, CERTIFICATION, AND SIGNATURE REQUIRED OF ALL APPLICANTS

I represent that, as set forth in the Learner Regulations (29 CFR Part 522), this plant meets the following conditions:

(1) The issuance of the certificate requested is necessary to prevent a curtailment of opportunities for employment.
(2) The issuance of the certificate will not tend to create unfair competitive labor cost advantages or impair or depress working standards for experienced workers for work of a like or comparable character in the industry.
(3) An adequate supply of experienced workers, as defined in the regulations, is not available for employment.
(4) Experienced workers presently employed in the plant are afforded an opportunity, to the fullest extent possible. for full-time employment.
(5) Learners are available for employment at subminimum wage rates.
(6) Learners to be trained under the certificate shall be afforded every reasonable opportunity for continued employment upon completion of the learning period.
(7) Abnormal labor conditions such as a strike, lockout, or other similar condition do not exist at this plant.
(8) There are no serious outstanding violations of the provisions of a previous learner certificate issued to this plant, or of other provisions of the Fair Labor Standards Act.
(9) The notice of filing of application is posted.

I certify that I have read the application and that to the best of my knowledge and belief the answers and information given in this form and any additional or supplemental statements are true; that the representations set forth above in support of this application to obtain a learner certificate are true; that I am duly authorized to sign this application; and know that the certificate, if issued, is subject to withdrawal or annulment in accordance with 29 CFR Part 528.

13. Signature:

15. Date:

14. Name and title of person signing application *(print or type)*:

16. Send the original application to the U.S. Department of Labor, Employment Standards Administration, Washington, D.C. 20210. A copy MUST be sent to the appropriate regional office.

(Date copy sent to regional office.)

246

SPACE FOR ADDITIONAL OR SUPPLEMENTAL INFORMATION

(Attach additional sheets if necessary)

Show numbers of any items continued

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF FAIR LABOR STANDARDS
Washington, D.C. 20210

Supplemental Instructions for Completing Application for a Learner Certificate, Form WH-209

Page 4 of the application form is for use in supplying additional answers to any item of the form or for submitting additional or supplemental information.

The instructions below refer to items 4 and 8 in Part I of the application form. Other items are either self-explanatory or are explained on the application form.

ITEM 4.a. SPECIFIC PRODUCT(S) MANUFACTURED.

Give definite information for each type of product and show the percentage of total production for each type of product listed. Note carefully the following instructions for your industry.

Apparel Industry: List each type of garment manufactured. Do not use general terms such as "outerwear," "sportswear," etc. Identify each type of garment with specific terms such as blouses, work shirts, dresses, etc. You should supply the following additional information for each specific type of garment produced, since the supplemental regulations for this industry do not include some garments and have special provisions for others.

a. Indicate whether garments are for men, boys, women, misses, juniors, or children.

b. If garments are for children, give the size range and/or age group.

c. Indicate kind of material used, e.g., woven fabric, knitted fabric, plastic, waterproofed cloth, leather, etc.

d. If made of knitted fabric, state whether fabric is purchased or is knitted in the same plant where garments are made.

e. If garments are dresses and/or blouses (for women, misses, and juniors), show the wholesale price at which garments are sold before discount is deducted and whether garments are sold by the unit or dozen. Applicants that are contractors should determine the wholesale price range at which the dresses or blouses made will be sold by the principal manufacturer or jobber to whom the dresses or blouses will be delivered. DO NOT GIVE AVERAGE PRICES BUT STATE THE WHOLESALE PRICE OR PRICE RANGE AT WHICH THE DRESSES OR BLOUSES ARE TO BE SOLD.

f. If garments are robes: Supply evidence that exceptional circumstances prevail at your plant and that employment opportunities at your plant will in fact be curtailed if authorization to employ learners at subminimum wages is not granted. This evidence is in addition to the information requested on the application form.

Knitted Wear Industry: The supplemental regulations for this industry apply to the manufacture of certain articles of knitted apparel, men's and boys' woven underwear, and swimwear of any fabric, as well as to the manufacture of knitted fabrics, towels and cloths. (See section 522.31 for definition of this industry.) Particular attention should be given to furnishing the following:

a. For garments other than underwear, nightwear, and sleepwear, indicate whether the knitted fabric used is knitted in the same plant where the garments are fabricated.

b. For knitted fabrics and fleece-lined garments, show the fabric content by percent of wool or animal fiber other than silk.

Form WH-209 Inst.
(Rev. 1/72)

Hosiery Industry: Specify whether full-fashioned or seamless, and if seamless, whether women's nylon.

Glove Industry: Specify type (dress or work) and whether gloves are knitted or are cut and sewn. If cut and sewn, show the kind(s) of material(s) used.

Cigar Industry: Specify retail price and whether hand or machine made.

ITEM 8. EMPLOYMENT OF ALL PRODUCTION AND RELATED WORKERS EXCEPT LEARNERS PAID SUBMINIMUM WAGES

Column A. List the same occupations as you listed in item 6. Include data for other production and related occupations on line (6).

Column B. Report the number of experienced workers during the most recent payroll period reported in item 7. (If none, enter "None.") Do not include office and sales employees nor those whose duties are primarily supervisory. Enter the total of lines (1)-(6) on the last line.

Columns C and D. Average straight-time hourly earnings must be reported for experienced workers in each of the occupations listed on lines 1-5 and on the last line for ALL PRODUCTION & RELATED WORKERS. This information must be reported for a payroll period of one year ago and for the most recent payroll period reported in item 7. Do not include data for learners paid subminimum wages, office and sales employees, and those whose duties are primarily supervisory.

Where the payroll system does not include totals for straight-time earnings (including make-up, but excluding EXTRA pay for overtime), the following instructions should help you in computing average straight-time hourly earnings.

1. Determine the gross amount of wages (including any make-up pay) during the payroll period.

2. Subtract from gross wages any EXTRA amount paid as premium for overtime. For overtime paid at 1 1/2 times the regular rate, subtract the extra half-time paid for overtime hours. For other premium overtime rates, similar subtractions are necessary. The amount remaining after subtraction of the overtime premium from gross wages is the amount of gross straight-time wages paid.

3. Divide the gross straight-time wages paid by the total hours worked. Enter the result in the appropriate spaces in columns C and D.

Column E. Enter the number of workers paid make-up to the statutory minimum wage during the most recent payroll period shown in item 7. This number includes workers paid on a piece-rate basis, whose actual earnings were less than the required minimum wage, and to whom you paid additional amounts in order to comply with the law. If no such workers were paid make-up, enter "None."

GPO 926-869

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

NOTICE OF FILING OF APPLICATION FOR A SPECIAL CERTIFICATE TO EMPLOY LEARNERS AT AN HOURLY WAGE BELOW THE STATUTORY MINIMUM UNDER THE FAIR LABOR STANDARDS ACT, AS AMENDED.

IMPORTANT

It is required by the Wage and Hour and Public Contracts Divisions that this Notice be posted in a conspicuous place in the plant from the date application is made until such time as a certificate is issued or the application is denied or withdrawn. *This Notice is not a permit or a certificate to employ learners at an hourly wage below the statutory minimum.*

*Date*________________

TO ALL EMPLOYEES of the

____
(Name of Company and Plant Address)

This company is filing an application with the Wage and Hour and Public Contracts Divisions for a Special Certificate to employ__________ *(number)* learners at an hourly wage below the statutory minimum established under Section 6 of the Fair Labor Standards Act, as amended, in the following occupations:

____

____

____

____

____

In filing this application, we are representing to the Wage and Hour and Public Contracts Divisions (a) that experienced workers in the occupations named above are not available for employment in the area from which we normally draw our labor supply, (b) that the certificate is necessary in order to prevent a curtailment of opportunities for employment, (c) that opportunity for full-time employment is afforded experienced workers, and (d) that there is reasonable opportunity for continued full-time employment for learners.

*By*________________________

*Title*_______________________

Form WH-208 (Rev. 7/61)

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

DATE:
REPLY TO ATTN OF:

SUBJECT: Application for Learner Certificate

TO:

Enclosed is a set of learner application forms and Learner Regulations, Part 522. After the application has been completed in triplicate and signed by an authorized company official, the original should be filed with the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, one copy forwarded to the office serving the area in which the plant is located *(indicated on the enclosed list of offices)*, and the other copy retained for your files.

All items in Parts I and III must be completed. In addition, Part II must be completed if you are applying for a new or expanding plant certificate. Incomplete applications will be returned.

In accordance with section 522.5(b) of the regulations, it is required that you submit with your application written evidence from the local public employment service office showing that an order for experienced workers was placed with that office not more than 15 days prior to the date of application. Without such written evidence a learner certificate cannot be issued.

The enclosed Notice of filing for a learner certificate (Form WH-208) must be posted at the time you file the application, in a conspicuous place in your plant.

The filing of an application does not authorize the employment of learners at wage rates below the statutory minimum of the Fair Labor Standards Act. All learners subject to the provisions of the act should be paid not less than the statutory minimum rate unless properly employed under the terms of a learner certificate previously issued.

All inquires concerning your application should be directed to the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

Enclosures:
Application Forms
Regulations, Part 522
List of Offices
Notice

Form WH-359 (Rev. Apr. 1977)

OMB Approval No. 44-R0308

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division

OFFICIAL USE ONLY

A. Control number ____________
B. Effective date ____________
C. Expiration date ____________
D. Reviewing official ____________

APPLICATION FOR AUTHORIZATION TO EMPLOY A STUDENT-LEARNER AT SUBMINIMUM WAGES

The school official's certification in Item 27 of the application provides temporary authority to employ the named student-learner under the terms proposed in the application which are in accordance with section 3(c) of the Student-Learner Regulations (29 CFR 520). The authority begins on the date the application is forwarded to the Regional Office of the Employment Standards Administration. At the end of 30 days, this authority is extended to become the approved certificate unless the Administrator or his/her authorized representative denies the application, issues a certificate with modified terms and conditions, or expressly extends the period of review. Note that the certificate is valid for no more than 1 school year and does not extend beyond the date of graduation.

READ CAREFULLY THE INSTRUCTIONS FOR COMPLETING THIS FORM. PRINT OR TYPE ALL ANSWERS.

1. NAME AND ADDRESS, INCLUDING ZIP CODE, OF ESTABLISHMENT MAKING APPLICATION:

2. TYPE OF BUSINESS AND PRODUCTS MANUFACTURED, SOLD, OR SERVICES RENDERED:

5. PROPOSED BEGINNING DATE OF EMPLOYMENT *(Month, day, year)*	
6. PROPOSED ENDING DATE OF EMPLOYMENT *(Month, day, year)*	
7. PROPOSED GRADUATION DATE *(Month, day, year)*	
8. NUMBER OF WEEKS IN SCHOOL YEAR	
9. TOTAL HOURS OF SCHOOL INSTRUCTION PER WEEK	
10. NUMBER OF SCHOOL HOURS DIRECTLY RELATED TO EMPLOYMENT TRAINING	

11. HOW IS EMPLOYMENT TRAINING SCHEDULED *(Weekly, alternate weeks, etc.)*?

12. NUMBER OF WEEKS OF EMPLOYMENT TRAINING AT SUBMINIMUM WAGES	
13. NUMBER OF HOURS OF EMPLOYMENT TRAINING A WEEK	
14. ARE FEDERAL VOCATIONAL EDUCATION FUNDS BEING USED FOR THIS PROGRAM?	
15. WAS THIS PROGRAM AUTHORIZED BY THE STATE BOARD OF VOCATIONAL EDUCATION?	

16. IF THE ANSWER TO ITEM 15 IS "NO", GIVE THE NAME OF THE RECOGNIZED EDUCATIONAL BODY WHICH APPROVED THIS PROGRAM:

3A. NAME AND ADDRESS OF STUDENT-LEARNER:

B: DATE OF BIRTH: *(Month, day, year)*

4. NAME AND ADDRESS, INCLUDING ZIP CODE, OF SCHOOL IN WHICH STUDENT-LEARNER IS ENROLLED:

17. TITLE OF STUDENT-LEARNER OCCUPATION:

18. NUMBER OF EMPLOYEES IN THIS ESTABLISHMENT	
19. NUMBER OF EXPERIENCED EMPLOYEES IN STUDENT-LEARNER'S OCCUPATION	
20. MINIMUM HOURLY WAGE RATE OF EXPERIENCED WORKERS IN ITEM 19	

21. SUBMINIMUM WAGE(S) TO BE PAID STUDENT-LEARNER *(if a progressive wage schedule is proposed, enter each rate and specify the period during which it will be paid)*:

22. IS AN AGE OR EMPLOYMENT CERTIFICATE ON FILE IN THIS ESTABLISHMENT FOR THIS STUDENT-LEARNER? *(If not, see instructions)*.	
23. IS IT ANTICIPATED THAT THE STUDENT-LEARNER WILL BE EMPLOYED IN THE PERFORMANCE OF A GOVERNMENT CONTRACT SUBJECT TO THE WALSH-HEALEY PUBLIC CONTRACTS ACT OR THE SERVICE CONTRACT ACT?	

ATTACH SEPARATE PAGES IF NECESSARY

Form WH-205
Rev. Aug. 1974

24. OUTLINE THE SCHOOL INSTRUCTION *directly* RELATED TO THE EMPLOYMENT TRAINING *(list courses, etc.)*.

25. OUTLINE TRAINING ON-THE-JOB *(describe briefly the work process in which the student-learner will be trained and list the types of any machines used).*

26. SIGNATURE OF STUDENT-LEARNER:

I have read the statements made above and ask that the requested certificate, authorizing my employment training at subminimum wages and under the conditions stated, be granted by the Administrator or his/her authorized representative.

(Print or type name of student) | *Signature of Student* | *Date*

27. CERTIFICATION BY SCHOOL OFFICIAL:

I certify that the student named herein will be receiving instruction in an accredited school and will be employed pursuant to a bona fide vocational training program, and that the application is properly executed in conformance with section 520.3(c) of the Student-Learner Regulations.

(Print or type name of official)

Signature of School Official | *Date*

Title

Tel. No. *(Include Area Code)*

28. CERTIFICATION BY EMPLOYER OR AUTHORIZED REPRESENTATIVE:

I certify, in applying for this certificate, that all of the foregoing statements are, to the best of my knowledge and belief, true and correct.

(Print or type name of employer or representative)

Signature of employer or representative | *Date*

Title

Tel. No. *(Include Area Code)*

ATTACH SEPARATE SHEETS IF NECESSARY

GPO 881-506

U. S. Department of Labor

Employment Standards Administration
Wage and Hour Division
525 S. Griffin, Suite 800
Dallas, Texas 75202-5007

Certification Section
(214) 767-4039

TO: Chief Operating Officer

Dear Sir or Madam:

Enclosed you will find the application form for Full-Time Student Certification. This form has just been revised due to computerization of this certification program. We hope that the automation will help us to serve your certificate needs more quickly.

In order to do this, we need your help. Your application will go for data entry exactly as you fill it out, so we ask that your completion be legible and that all applicable blanks are filled in. Without this, there could be delays in the processing of your applications.

Item #1 - Self-explanatory

Item #2 - Please note for us the type of authority requested.

Item #3 - Please note that at the bottom of this section is the request for the date your establishment began business.

Item #4 - This item should be completed if you wish to have your Full-Time Student Certificate mailed to an address other than the establishment address shown in Item #3.

Item #5 - We realize that this item may generate some questions. We hope that the majority of these will be answered by the attachment enclosed herein entitled "Standard Industrial Classification (SIC)".

Should you have any questions about the proper code for your establishment, please call us.

Item #6 - The proposed subminimum wage must never be less than 85% of the full Federal minimum wage of the Fair Labor Standards Act of 1938, as amended (FLSA). At present, the least figure amount which may be entered into this item is $3.23. On April 1, 1991, the least figure amount in this item will be $3.6125.

United States Department of Labor 75 Years of Working for America's Future

Item #7 - This item is for renewal applications as stated in the instructions.

Item #8 - The item must be completed showing the address of all establishments in the enterprise for which you wish to request a "not more than six" certificate.

Item #9 - This item must contain a signature, title, phone number and date of signature.

Item #10 - Please refer to the enclosure entitled "Supplemental instruction for Completing Item 10".

We hope that the above and the enclosed attachments will aid in your completion of the application forms. Thank you so much for your cooperation and assistance in the clear, accurate and complete application for your Full-Time Student certification.

Sincerely,

Bill A. Belt
Regional Administrator
for Wage and Hour

Enclosures

STANDARD INDUSTRIAL CLASSIFICATION (SIC)

00 - AGRICULTURE

Group No. 01 - CROPS	This major group includes establishments (farms, orchards, greenhouses, nurseries, etc.) primarily engaged in the production of crops or plants, vines and trees (excluding forestry operations). This major group also includes establishments primarily engaged in the operation of sod farms, mushroom cellars, cranberry bogs, and in the production of bulbs, flower seed, and vegetable seed.
Group No. 02 - LIVESTOCK	This major group includes establishments (farms, ranches, dairies, feedlots, egg production facilities, broiler facilities, poultry hatcheries, apiaries, etc.) primarily engaged in the keeping, grazing, or feeding of livestock for the sale of livestock products (including serum), for livestock increase, or for value increase. Livestock, as used here, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horse, rabbits, pets, fish in captivity, and fur-bearing animals in captivity.
Group No. 07 - AGRICULTURAL SERVICES	This major group includes establishments primarily engaged in performing soil preparation services, crop services, veterinary services, other animal services, farm labor and management services, and landscape and horticultural services, for others on a fee or contract basis. However, feedlots and poultry hatcheries operated on a fee or contract basis are included in Group No. 2.
**Group No. 08 - FORESTRY	This major group included establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation services and the gathering of gums, barks, balsam needles, maple sap, Spanish Moss, and other forest products. NOT ELIGIBLE FOR FTS CERTIFICATE.

**Group No. 09 - FISHING — This major group includes establishments primarily engaged in commercial fishing (including crabbing, lobstering, clamming, oystering, and the gathering of sponges, seaweed, etc.) and the operation of fish hatcheries, fish and game preserves, in commercial hunting and trapping, and in game propagation. NOT ELIGIBLE FOR FTS CERTIFICATE.

** NOT ELIGIBLE FOR FULL-TIME STUDENTS CERTIFICATION

53 - GENERAL MERCHANDISE

This major group includes retail stores which sell a number of lines of merchandise, such as dry goods, apparel and accessories, furniture and home furnishings, small wares, hardware, and food. The stores included in this group are known as department stores, variety stores, general merchandise stores, general stores, etc. Establishments primarily engaged in selling used general merchandise and those selling general merchandise by mail, vending machine, or direct are classified in Group No. 59.

54 - GROCERY STORE

This major group includes retail stores primarily engaged in selling food for home preparation and consumption. Establishments primarily engaged in selling prepared foods and drinks for consumption on the premises are classified in Group No. 58, and stores primarily engaged in selling packaged beers and liquors in Group No. 59.

56 - CLOTHING/SHOE STORE

This major group includes retail stores primarily engaged in selling new clothing, shoes, hats, underwear, and related articles for personal wear and adornment. Furriers and custom tailors carrying stocks of materials are included in this group.

58 - RESTAURANT/FOOD STORE

This major group includes retail establishments selling prepared foods and drinks for consumption on the premises, and also lunch counters for immediate consumption. Restaurant, lunch counters, and drinking places operated as a subordinate service facility by other establishments are not included in this industry, unless they are operated as leased departments by outside operators. Thus, restaurants and lunch counters operated by hotels are classified in Group No. 70; those operated by departments stores in Group No. 53.

59 - OTHER RETAIL/SERVICE

This major group includes retail establishments, not elsewhere classified. These establishments fall into the following categories: drug stores, liquor stores, used merchandise stores, nonstore retailers, fuel and ice dealers, miscellaneous shopping goods stores, florists, cigar stores and stands, and miscellaneous retail stores, not elsewhere classified.

70 - HOTEL/MOTEL

This major group includes commercial and institutional establishments engaged in furnishing lodging, or lodging and meals, and camping space and camping facilities, on a fee basis.

78 - MOVIE/THEATER

This major group includes establishments producing and distributing motion pictures, exhibiting motion pictures in commercially operated theaters, and furnishing services to the motion picture industry. The term "motion picture" includes similar productions for television or other media using film, tape or other means.

80 - HOSPITAL/NURSING HOME

This major group includes establishments primarily engaged in furnishing medical, surgical, and other health service to persons. Associations or groups primarily engaged in providing medical or other health services to members are included, but those which limit their services to the provision of insurance against hospitalization or medical costs are classified in Group No. 63.

OR AGRICULTURE-FORM WH-200-MIS

IMPORTANT: Read the instructions on the back of the WH-200-MIS. Additionally, initial applications for monthly allowances greater than 10 percent and applications for changes in allowances greater than 10 percent should provide the appropriate base year information in Item 10. Applicants lacking information for the appropriate base year should provide such information from an establishment of the same general character operating in the community or nearest comparable community within the state, or provide information on recent employment experience under certificate of such an establishment. The Wage and Hour Division will offer assistance wherever possible.

There are THREE different base years for retail or service establishments:

For retail or service establishments of the type covered by the Act prior to the 1966 Amendments, the BASE YEAR is from MAY 1960 through APRIL 1961. This includes retail or service establishments having an annual dollar volume of not less than $250,000 which are part of a $1 million enterprise and gasoline service establishments with annual gross sales of $250,000 or more. Note: Restaurants, hospitals, nursing homes, motels and theaters are not included in this category.

For retail or service establishments of the type covered by the 1966 Amendments, the BASE YEAR is from FEBRUARY 1966 through JANUARY 1967. This includes retail or service establishments having an annual dollar volume of not less than $250,000 which are part of an enterprise having an annual dollar volume of at least $250,000 and all individually owned and operated retail or service establishments having an annual dollar volume of between $250,000 and $1 million. Restaurants, hotels and motels are of this type if the dollar volume tests are met. Hospitals and nursing homes, regardless of dollar volume, are also included. Note: Retail or service establishments of the type covered prior to the 1966 Amendments and theaters are not included in this category.

For retail or service establishments of the type covered by the 1974 Amendments, the BASE YEAR is from MAY 1973 through APRIL 1974. This includes retail or service establishments, without regard to annual dollar volume, which are part of an enterprise having an annual dollar volume of at least $250,000. Theaters are of this type if the dollar volume tests are met. Note: Establishments of the types covered prior to the 1974 Amendments are not in this category.

For Agriculture the BASE YEAR is from FEBRUARY 1966 through JANUARY 1967, with few exceptions.

The few exceptions are agricultural employers whose employees were made subject to the Act by the 1974 Amendments. For these few applicants the BASE YEAR is from MAY 1973 through APRIL 1974.

Column A: Enter the Calendar month (or beginning date of the fiscal month) and the year for which base-year employment data are submitted. If the data are on a fiscal month basis, begin with the period starting nearest to the first day of the applicable base year. Be sure to use the appropriate base year.

Column B: For each period listed in column A, enter the total hours worked by all employees including supervisory, part-time and student employees.

Column C: For each period list the total hours of full-time students. For an establishment whose base year is either 1960-61, or 1966-67, the full-time student hours are only those paid for at less than $1 an hour. For the 1973-74 base year, the full-time student hours may include all full-time student hours, regardless of the wage rate.

Column D: For each period listed in column A, enter the percentage derived by dividing the figure in column C by that in column B.

Column E: For each period listed in column C, enter the percentage allowance requested. The allowance requested may not exceed the percentage computed in column D, except where the percentage in column D is less than 10%. In such cases, 10% may be requested.

Column F: For each month indicate whether the information entered is from the records of the establishment for which this application is submitted or from the records of another establishment. If from other establishment(s), enter the name and address of the other establishment(s) in Column F. If the information is from the establishment for which the application is submitted, indicate this by checking the box.

Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

OMB No.: 1215-0032
Expires: 07-31-90

1. ☐ Initial application.
☐ Renewal application. Previous expiration date ___ / ___ / ___

FOR OFFICE USE ONLY

cert no. ______________________
prev cert no. ______________________
☐ app ☐ den ☐ ho ☐ lep ☐ % ☐ misc ☐ SIC
RO __________ AO __________
print cert: ☐ yes ☐ no eff ___ / ___ / ___ exp ___ / ___ / ___
base year: ☐ 60/61 ☐ 66/67 ☐ 73/74 ☐ archive
remarks ______________________
____

2. Authority requested:

☐ Not more than six *(see definition of "employer" on reverse)* *(complete items 2, 3, 5 and 9).*

☐ Ten percent of the total monthly hours *(complete items 1–7 and 9).*

☐ Greater than ten percent of the total monthly hours *(complete items 1–7, 9 and 10).*

3. Name and address *(including ZIP code)* of establishment at which full-time students will be employed:

Date establishment began business:

4. Name and address to which correspondence should be mailed, other than item 3:

5. **Type of establishment (SIC)**

☐ 00 agriculture, specify: ______________
☐ 53 general merchandise
☐ 54 grocery store
☐ 56 clothing/shoe store
☐ 58 restaurant/food store
☐ 59 other retail/service, specify: ______________
☐ 70 hotel/motel
☐ 78 movie/theater
☐ 80 hospital/nursing home

6. Proposed Subminimum Wage:

Not less than $ ______________ per hour

7. If this is a renewal of "ten percent" or "greater than ten percent," provide the total hours of employment under certificate during the most recent 12 months.

Hours of all employees *(including managers)*: ______________

Hours of full-time students at subminimum wages: ______________

(If you paid no full-time students less than the minimum wage, enter "0".)

8. If requesting authority for "not more than six" enter the name and address of any other location where students will be employed.

1 ______________________
2 ______________________
3 ______________________
4 ______________________
5 ______________________

9. Signature and title of authorized representative:

Telephone No. *(Including area code)*:

(See representations on the reverse side.)

Date:

10. THIS ITEM NEED ONLY BE COMPLETED ON INITIAL REQUEST FOR MORE THAN TEN PERCENT – SEE INSTRUCTIONS

A. Calendar month *(or beginning date of each fiscal month)* and year	B. Total hours of all employees	C. Hours of full-time students	D. Full-time student hours as percent of total hours	E. Percent allowance requested	F. ☐ Check here if you used data from your own establishment. If you used base year data from another establishment, identify below.

261

COPY 1

Form WH-200-MIS (Rev. Oct. 1987)

INSTRUCTIONS, CERTIFICATIONS AND REPRESENTATIONS

IMPORTANT: Do not write in the "FOR OFFICE USE ONLY" block. Failure to complete all necessary items may cause delay in certification. Please use typewriter or write firmly. After completing the application, detach and retain Copy 2. Submit Copy 1 to the office of the Wage and Hour Division indicated in the upper right hand corner of the front of the application. No authority may be granted unless a completed application has been submitted (29 CFR 519). Applicants requesting monthly allowances greater than 10 percent should refer to the supplemental instructions for completing Item 10 unless the application is for renewal of authority currently in effect or recently expired.

Any questions you have concerning the Fair Labor Standards Act (FLSA) may be referred to the nearest office of the Division. These offices appear in most telephone directories under U.S. Government, Department of Labor, Wage and Hour Division.

NOTE: There is a simplified postcard application Form WH-202 which may be used by an "employer" who intends to employ not more than six full-time students on any workday. The term "employer" in this context means the highest structure of ownership or control and, hence, may be more than one establishment or farm, e.g., the controlling conglomerate or enterprise would be the "employer". Thus, the limit of six full-time students applies to the "employer" and not to each establishment or farm in the enterprise or business organization.

Such an "employer" may also use this form (WH-200-MIS) and needs to complete only Items 2, 3, and 5 and certify by signing this form (Item 9) that, "the employment of not more than six full-time students on any workday will not reduce the full-time employment opportunities of other workers." If the employment of full time students under this authority will involve more than one location, e.g., one student at each of three locations, the name and address of each location should be listed in Item 8. Authority to employ not more than six full-time students at subminimum wages is effective with the forwarding of a properly completed application to the appropriate office of the Wage and Hour Division and the posting of a notice of filing of such application in a conspicuous place, such as the employee bulletin board.

ALL OTHER APPLICANTS:

Your signature on the application certifies that you have read the application and that to the best of your knowledge and belief the answers and information given in the application are true; that the representations set forth in support of this application to obtain full-time student authorization are true; that you are duly authorized to sign this application; and that the authorization, if issued, is subject to withdrawal or annulment in accordance with 29 CFR 528.

I represent that as set forth in regulations governing the employment of full-time students (29 CFR 519) the following conditions exist in this establishment:

(1) The issuance of the authority requested herein is necessary to prevent a curtailment of opportunities for employment;

(2) The employment of full-time students will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under the regulations;

(3) Full-time students are available for employment at subminimum wages;

(4) Abnormal labor conditions, such as a strike or lockout, do not exist at this establishment;

(5) There are no serious outstanding violations of the provisions of previous full-time student authority issued to this establishment nor have there been any serious violations of other provisions of the FLSA;

(6) Full-time students are employed in compliance with applicable local ordinances, State laws, and other Federal laws;

(7) The issuance of this authority will not result in a reduction of a wage rate paid to a current employee, including current student employees.

Appendix F: Determining Piece Rates and Hourly Wage Rates

APPENDIX F

Determining Piece Rates and Hourly Rates

HOW TO MAKE A TIME STUDY

PIECE RATE WORK

There are various procedures for making time studies. The one described here is used by many workshops.

1. Select non-handicapped persons for the tests. Workshops generally use staff members for this purpose. Preferably, a time study should be made with at least three people and persons with unusually high or low dexterity should not be used.

2. Allow persons to become thoroughly familiar with the work before starting the test. A sufficiently long test period should be used to get an adequate sampling of the participants' normal production. The total testing period need not be continuous; it may consist of a series of tests run at different times. However, everyone should begin and stop work at the same time.

3. Determine the average hourly production (number of units) of the test group, allowing for personal time and fatigue. The general practice is to allow 10 minutes per hour.

4. Determine the prevailing rate paid in industry for work requiring similar skill. This may be done by contacting the local employment service office or other sources which may be available, such as members of the board of directors who might have knowledge, local trade union officials, local employers, or workers in industry doing similar work.

5. Divide the prevailing industry rate by the average hourly production of the test group to determine the unit piece rate.

EXAMPLE: If 3 persons worked a total of 9 "fifty-minute" hours (allowing 10 minutes per hour for personal time and fatigue), and produced a total of 2700 units, the average production would be 300 units per hour (2700 units divided by 9 hours). Assuming the test involves semiskilled work, and the prevailing semiskilled labor rate in industry is $4.75) per hour, the piece rate would be $.01584 per unit ($4.75 divided by 300 units). ALWAYS ROUND UP!

PREPARING AN ELAPSED AVERAGE TIME STUDY FOR WORK STANDARDS

Some workshops do not have the staff skills or the decimal-minute decimal-hour type stopwatches necessary to conduct detailed time studies, operation by operation. In this situation, there are other acceptable time study procedures used by many workshops where simulated or trial runs of a job are performed by non-handicapped workers or staff members, and timed to determine the average output per hour. This average output, adjusted to a 50 minute hour to provide for a 20% personal time and fatigue allowance, is used as a shop time standard on which worker productivity and piece rates are based.

This elapsed average time study technique should follow these procedures:

1. The job and workplace must be set up as it is planned or exists for production. The same tools or fixtures should be used and the operations standardized in the best sequence and methods.
2. Use at least three non-handicapped persons for the study. Each should have a good manual dexterity for the type of work being performed. Allow the persons studied to become thoroughly familiar with the work before starting the study. The basic sequence of work should be followed, but individuals can use methods or variations easiest for them to achieve the best production.
3. Time each worker through three study periods of at least 15 minutes each, recording their output for each period. If a total study time of fifty minutes is used, the calculations are simplified.

OPERATION # 060	DESCRIPTION: ASSEMBLE WHEELS & AXLE.					
NAME OF PERSONS STUDIED	DON WEST		R. SAMSON		B. DAVIS.	
OBSERVED DATA	TIME	UNITS	TIME	UNITS	TIME	UNITS
FIRST TRIAL PERIOD	20	72	15	36	15	48
SECOND TRIAL PERIOD	15	60	15	42	15	57
THIRD TRIAL PERIOD	20	78	15	39	20	66
TOTAL TIME AND PRODUCTION	55	210	45	117	50	171
AVERAGE TIME PER UNIT	.26 MIN.		.38 MIN.		.29 MIN.	

CALCULATIONS: 150 / 498 = .30 X 1.20 = .360
(TOTAL STUDY) TOTAL TIME / TOTAL UNITS = AVERAGE TIME X ALLOWANCES = STANDARD TIME

4. Total the study times and divide by the total output for each person to find the average time per unit.
5. Total all of the times and outputs of the persons studied to figure the average time per unit for the group. Add 20% allowances to this for personal time and unavoidable delay. This figure is the Standard Time.

   Average time per unit X 1.20 = Standard Time per unit

6. The Production Standard is found by dividing the Standard Time into a 60 minute work hour and is expressed in units produced per hour.

   If the study periods total 50 minutes per person, then the average number of units produced is the Production Standard per hour including the normal 20% allowances.

# ELAPSED AVERAGE TIME STUDY
for
Pallet Repair 36" X 36"

CONTRACT:

OPERATION # 010 DESCRIPTION: Disassemble pallet for repair

NAME OF PERSONS STUDIED						
OBSERVED DATA	TIME	UNITS	TIME	UNITS	TIME	UNITS
FIRST TRIAL PERIOD	30	6	15	3	15	4
SECOND TRIAL PERIOD	15	5	15	4	30	9
THIRD TRIAL PERIOD	15	7	30	7	15	5
TOTAL TIME AND PRODUCTION	60	18	60	14	60	18
AVERAGE TIME PER UNIT	3.33 Min.		4.28		3.33	

CALCULATIONS: 180 / 50 = 3.6 X 1.20 = 4.32
(TOTAL STUDY) TOTAL TIME / TOTAL UNITS = AVERAGE TIME X ALLOWANCES = STANDARD TIME

OPERATION # 020 DESCRIPTION: Repair pallet- nail boards

NAME OF PERSONS STUDIED						
OBSERVED DATA	TIME	UNITS	TIME	UNITS	TIME	UNITS
FIRST TRIAL PERIOD	15	11	15	9	30	20
SECOND TRIAL PERIOD	15	12	30	18	15	12
THIRD TRIAL PERIOD	30	20	15	7	15	11
TOTAL TIME AND PRODUCTION	60	43	60	34	60	43
AVERAGE TIME PER UNIT	1.39		1.76		1.8	

CALCULATIONS: 180 / 120 = 1.5 X 1.20 = 1.8
(TOTAL STUDY) TOTAL TIME / TOTAL UNITS = AVERAGE TIME X ALLOWANCES = STANDARD TIME

OPERATION # DESCRIPTION:

NAME OF PERSONS STUDIED						
OBSERVED DATA	TIME	UNITS	TIME	UNITS	TIME	UNITS
FIRST TRIAL PERIOD						
SECOND TRIAL PERIOD						
THIRD TRIAL PERIOD						
TOTAL TIME AND PRODUCTION						
AVERAGE TIME PER UNIT						

CALCULATIONS: / = X 1.20 =
(TOTAL STUDY) TOTAL TIME / TOTAL UNITS = AVERAGE TIME X ALLOWANCES = STANDARD TIME

ELAPSED AVERAGE TIME STUDY

CONTRACT: ____________________

OPERATION # __________ DESCRIPTION: ____________________

NAME OF PERSONS STUDIED						
OBSERVED DATA	TIME	UNITS	TIME	UNITS	TIME	UNITS
FIRST TRIAL PERIOD						
SECOND TRIAL PERIOD						
THIRD TRIAL PERIOD						
TOTAL TIME AND PRODUCTION						
AVERAGE TIME PER UNIT						

CALCULATIONS:		/		=		X	1.20	=	
(TOTAL STUDY)	TOTAL TIME	/	TOTAL UNITS	=	AVERAGE TIME	X	ALLOWANCES	=	STANDARD TIME

OPERATION # __________ DESCRIPTION: ____________________

NAME OF PERSONS STUDIED						
OBSERVED DATA	TIME	UNITS	TIME	UNITS	TIME	UNITS
FIRST TRIAL PERIOD						
SECOND TRIAL PERIOD						
THIRD TRIAL PERIOD						
TOTAL TIME AND PRODUCTION						
AVERAGE TIME PER UNIT						

CALCULATIONS:		/		=		X	1.20	=	
(TOTAL STUDY)	TOTAL TIME	/	TOTAL UNITS	=	AVERAGE TIME	X	ALLOWANCES	=	STANDARD TIME

OPERATION # __________ DESCRIPTION: ____________________

NAME OF PERSONS STUDIED						
OBSERVED DATA	TIME	UNITS	TIME	UNITS	TIME	UNITS
FIRST TRIAL PERIOD						
SECOND TRIAL PERIOD						
THIRD TRIAL PERIOD						
TOTAL TIME AND PRODUCTION						
AVERAGE TIME PER UNIT						

CALCULATIONS:		/		=		X	1.20	=	
(TOTAL STUDY)	TOTAL TIME	/	TOTAL UNITS	=	AVERAGE TIME	X	ALLOWANCES	=	STANDARD TIME

DETERMINING HOURLY WORKER WAGES

The following documents provide examples to assist you in the determination of subminimum wages for workers paid hourly. Workers must be evaluated at least every six months, and/or when a worker changes jobs.

Process for determining wages:

1. Prevailing wage determined, must be updated at least once per year
2. Methodology established
3. Complete Time study based on non-disabled workers to establish the Industrial Standard
4. Consumer time study completed based on Industrial Standards and methodology

Critical issues include:

1. Prevailing wage based on "experienced worker" wage.
2. Methods for time studies based on major duties of the job
3. Methodology includes **NO** "behavioral" factors: such as; attendance, getting to work on time, relationship with supervisor or coworkers, communication ability, ability to follow instructions, etc.
4. Time studied work may be simulated if representative of actual work performed
5. **All consumer wage calculations MUST be rounded up.**

PREVAILING WAGE SURVEY SUMMARY FORM

JOB TITLE:

JOB DESCRIPTION:

	# 1	# 2	# 3
DATE			
COMPANY NAME			
ADDRESS			
TELEPHONE #			
CONTACT PERSON			
TITLE			
# OF EMPLOYEES			
ENTRY WAGE			
EXP. WAGE			

*Experienced worker wage means a worker who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period. Typically, such a worker will have received at least one pay raise after successful completion of the probationary or training period.

Type of survey: ___ *Telephone* ___ *Mail* ___ *EDD* ___ *Other(Specify:________________________)*

PREPARED BY:________________________ PREVAILING WAGE:________________________

TITLE:________________________ DATE:________________________

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job:

Complete/Partial job, ____out of_____tasks:

Component of:

Task or job description:

Analysis of Task(s) to be timed:

NON DISABLED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1	A			
	B			
	C			
2	A			
	B			
	C			
3	A			
	B			
	C			
		TOTAL		
		AVERAGE TIME		
		STD TIME X115%		

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: ______________________________ Date: ____________

Title: ______________________________

CJDOL:FINAL 7/93

econds	=	Decimal Minutes
1	=	0.0167
2	=	0.0333
3	=	0.0500
4	=	0.0667
5	=	0.0833
6	=	0.1000
7	=	0.1167
8	=	0.1333
9	=	0.1500
10	=	0.1667
11	=	0.1833
12	=	0.2000
13	=	0.2167
14	=	0.2333
15	=	0.2500
16	=	0.2667
17	=	0.2833
18	=	0.3000
19	=	0.3167
20	=	0.3333
21	=	0.3500
22	=	0.3667
23	=	0.3833
24	=	0.4000
25	=	0.4167
26	=	0.4333
27	=	0.4500
28	=	0.4667
29	=	0.4833
30	=	0.5000

Seconds	=	Decimal Minutes
31	=	0.5167
32	=	0.5333
33	=	0.5500
34	=	0.5667
35	=	0.5833
36	=	0.6000
37	=	0.6167
38	=	0.6333
39	=	0.6500
40	=	0.6667
41	=	0.6833
42	=	0.7000
43	=	0.7167
44	=	0.7333
45	=	0.7500
46	=	0.7667
47	=	0.7833
48	=	0.8000
49	=	0.8167
50	=	0.8333
51	=	0.8500
52	=	0.8667
53	=	0.8833
54	=	0.9000
55	=	0.9167
56	=	0.9333
57	=	0.9500
58	=	0.9667
59	=	0.9833
60	=	1.0000

INDIVIDUAL PRODUCTIVITY WORKSHEET FOR HOURLY RATED WORKERS

Workers' Name:________________________________
Job Title:________________________________
Date of employment:________________________________
Present Hourly wage:________________________________

Date:________________________________
Rater's Name:________________________________
Rater's Title:________________________________
Prevailing Wage:________________________________

		a	b	c	d	e	f	g	h
DATE/TIME*	TASK	%	TIME	RE-WORK	TOTAL TIME	IND. STD	PROD. %	WTD $/HR	WAGE
	TOTALS (Col.a,g,h)	100%						PREVAILING WAGE	COMMENSURATE WAGE

Always round wages UP

**=Time of day*
(a) %=Total percentage of overall time consumer spends on task(s). (Total column (a)=100%)
Time spent to complete task (b) + Re-work time required to meet quality standard of task(c) = (d)Total time
(e)Ind. Std (from time study) •/• (d)Total Task time =(f)Productivity %
(g)WTD$/Hr (Weighted $ per hour)=(a) X prevailing wage (total column g = prevailing wage)
(f)Productivity % X (g)WTD $/HR = (h) Commensurate wage earned for each task
*NEW **Commensurate wage** for the job = Total of all wages earned*

Effective Date ________________________

Worker's Signature ________________________________

CJDOL-FINAL 3/94

SAMPLE

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job: *Parking Lot Cleanup*

[✓ Complete]/Partial job, ____out of____tasks:

Component of: *Parking lot cleaner*

Task or job description: *General manual clean up of parking lot of ABC Inc.*

Analysis of Task(s) to be timed: *Using sample area on site that has been set aside for time study purposes and has been prepared with trash reserved for time studies, worker manua picks up large trash items and places in trash bags, sweeps area, and disposes of trash in designated area.*

NON HANDICAPPED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1 Harry S.	A 13.60 min		13.60	
	B 10.25 min		10.25	
	C 11.45 min		11.45	
2 Susan P.	A 18.28	3.5	14.78	Broom not available
	B 13.75		13.75	
	C 12.80		12.80	
3 Tom R.	A 14.50		14.50	
	B 12.38		12.38	
	C 13.00		13.00	
		TOTAL	116.51	
		AVERAGE TIME	12.95	
		STD TIME X115%	14.89 min.	

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: Ann D.

Date: May 15, 1993

Title: Production Assistant

SAMPLE

INDIVIDUAL PRODUCTIVITY WORKSHEET FOR HOURLY RATED WORKERS

Workers' Name: George
Job Title: Parking lot cleaner
Date of employment: 3-1-93
Present Hourly wage: $2.45 hr.

Date: July 1, 1993
Rater's Name: Ann D.
Rater's Title: Production assistant
Prevailing Wage: $5.85 per hour

		a	b	c	d	e	f	g	h
DATE/TIME*	TASK	%	TIME	RE-WORK	TOTAL TIME	IND. STD	PROD. %	WTD $/HR	WAGE
7-1-93 1415	Parking lot cleanup	100	22.75 min	3.5 min	26.25 m	14.89	.5673	$5.85	3.3188
	TOTALS (Col.a,g,h)	100%						$5.85 PREVAILING WAGE	$3.32 hr. COMMENSURATE WAGE

Always round wages UP

**=Time of day*

(a) %=Total percentage of time consumer spends on task(s) during a regular work day (total column (a)=100%)

Time spent to complete task (b) + Re-work time required to meet quality standard of task(c) = (d)Total time

(e)Ind. Std (from time study) •/• (d)Total Task time =(f)Productivity %

(g)WTD$/Hr (Weighted $ per hour)=(a) X prevailing wage (total column g = prevailing wage)

(f)Productivity % X (g)WTD $/HR = (h) Commensurate wage earned for each task

NEW Commensurate wage for the job = Total of all wages earned

Effective Date 7-1-93

Worker's Signature

SAMPLE

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job: *#1-Restroom Cleaning*

Complete/[✓ Partial] job, __1__out of___4__tasks:

Component of: *Hotel Room Attendant*

Task or job description: *Clean bathroom in ABC Motel room*

Analysis of Task(s) to be timed: *Cleans shower/bath/sink, commode: cleans mirror, removes soiled towels' cleans floor, restocks bath items*

NON HANDICAPPED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1 Sam	A 11.25 min		11.25	
	B 12.50 min		12.50	
	C 15.75 min	3.0	12.75	dropped glass
2 Judy	A 10.75 min		10.75	
	B 11.45 min		11.45	
	C 11.50		11.50	
3 Mary	A 12.5		12.5	
	B 13.25		13.25	
	C 11.75		11.75	
		TOTAL	107.70	
		AVERAGE TIME	11.9667	
		STD TIME X115%	13.7617	

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: Ann D. Date: May 1, 1993

Title: Production Assistant

SAMPLE

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job: *#2-Change bed(s)*

Complete/[✓ Partial] job, __2__ out of __4__ tasks:

Component of: *Hotel Room Attendant*

Task or job description: *Change bedding in ABC Motel room*

Analysis of Task(s) to be timed: *Removes/strips soiled linens from bed. Remakes bed(s)*

NON HANDICAPPED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1 Sam	A 4.56 min		4.56	
	B 5.25		5.25	
	C 4.85		4.85	
2 Judy	A 8.72	2.75	5.97	Ripped sheet
	B 4.75		4.75	
	C 5.12		5.12	
3 Mary	A 4.90		4.90	
	B 6.50	1.5	5.00	Sheet with hole/replace
	C 5.25		5.25	
		TOTAL	45.65	
		AVERAGE TIME	5.0722	
		STD TIME X115%	5.8330	

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: Ann D. Date: May 1, 1993

Title: Production Assistant

SAMPLE

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job: *#3-General Cleaning*

Complete/[✓ Partial] job, __3__out of___4__tasks:

Component of: *Hotel Room Attendant*

Task or job description: *General cleaning in ABC Motel room*

Analysis of Task(s) to be timed: *Dusts, empties trash, restocks hotel desk items and other miscellaneous items, cleans room mirrors, empties trash, replaces trash liners*

NON HANDICAPPED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1 Sam	A 6.75 min.		6.75	
	B 7.25		7.25	
	C 6.35		6.35	
2 Judy	A 6.85		6.85	
	B 6.25		6.25	
	C 6.80		6.80	
3 Mary	A 7.10		7.10	
	B 6.95		6.95	
	C 6.80		6.80	
		TOTAL	61.1000	
		AVERAGE TIME	6.7889	
		STD TIME X115%	7.8072	

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: Ann Date: May 10, 1993

Title: Production Assistant

SAMPLE

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job: *#4-Vacuum Cleaning*

Complete/[✓ Partial] job, __4__out of___4__tasks:

Component of: *Hotel Room Attendant*

Task or job description: *Vacuum in ABC Motel room*

Analysis of Task(s) to be timed: *Vacuums all areas of room*

NON HANDICAPPED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1 Sam	A 3.20		3.20	
	B 8.45	4.75	3.70	Changed vacuum bag
	C 3.75		3.75	
2 Judy	A 4.25		4.25	
	B 3.85		3.85	
	C 4.10		4.10	
3 Mary	A 4.00		4.00	
	B 4.25		4.25	
	C 3.90		3.90	
		TOTAL	35.00	
		AVERAGE TIME	3.8889	
		STD TIME X115%	4.4722	

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: Ann D.　　Date: May 10, 1993

Title: Production Assistant

SAMPLE A

INDIVIDUAL PRODUCTIVITY WORKSHEET FOR HOURLY RATED WORKERS

Workers' Name: Julie
Job Title: Hotel Room Attendant
Date of employment: June 30, 1993
Present Hourly wage: $.75 hr* New worker wage

Date: July 5, 1993
Rater's Name: Ann D.
Rater's Title: Production Assistant
Prevailing Wage: $5.35 hr

		a	b	c	d	e	f	g	h
DATE/TIME*	TASK	%	TIME	RE-WORK	TOTAL TIME	IND. STD	PROD. %	WTD $/HR	WAGE
7/5/93 1030	#1-Restroom Cleaning	25	22.25	5.75	28.00	13.7617	.4915	1.3375	.6574
7/5/93 1130	#2 Change Beds	10	16.85	0	16.85	5.8330	.3462	.5350	.1853
7/6/93 0930	#3 General Cleaning	60	38.50	0	38.50	7.8072	.2028	3.2100	.6510
7/6/93 1030	#4- Vacuum	5	12.75	2.0	14.75	4.4722	.3032	.2675	.0812
	TOTALS (Col.a,g,h)	100%						$5.3500 PREVAILING WAGE	$1.5749 $1.58 hr. COMMENSURATE WAGE

Always round wages UP

**=Time of day*
(a) %=Total percentage of time consumer spends on task(s) during a regular work day (total column (a)=100%)
Time spent to complete task (b) + Re-work time required to meet quality standard of task(c) = (d)Total time
(e)Ind. Std (from time study) •/• (d)Total Task time =(f)Productivity %
(g)WTD$/Hr (Weighted $ per hour)=(a) X prevailing wage (total column g = prevailing wage)
(f)Productivity % X (g)WTD $/HR = (h) Commensurate wage earned for each task
NEW Commensurate wage for the job = Total of all wages earned

Effective Date June 30, 1993

Worker's Signature

* Hourly wages paid to date to be adjusted to new commensurate wage level

CJDOL:FI 7/93

SAMPLE B

INDIVIDUAL PRODUCTIVITY WORKSHEET FOR HOURLY RATED WORKERS

Workers' Name: Mary
Job Title: Hotel Room Attendant
Date of employment: April 10, 1993
Present Hourly wage: $1.85 hr.

Date: July 5, 1993
Rater's Name: Ann D.
Rater's Title: Production Assistant
Prevailing Wage: $5.35 hr.

		a	b	c	d	e	f	g	h
DATE/TIME*	TASK	%	TIME	RE-WORK	TOTAL TIME	IND. STD	PROD. %	WTD $/HR	WAGE
7/5/93	#1-Restroom Cleaning	0							
7/5/93	#2-Change Beds	0							
7/5/93 0900	#3-General Cleaning	20	18.75 m	4.85 m	23.60	7.8072	.3309	1.0700	.354
7/5/93 1430	#4-Vacuum	80	9.52 m	0	9.52	4.4722	.4698	4.28	2.0108
	TOTALS (Col.a,g,h)	100%						$5.3500 PREVAILING WAGE	$2.3649 $2.37 COMMENSURATE WAGE

Always round wages UP

**=Time of day*
(a) %=Total percentage of time consumer spends on task(s) during a regular work day (total column (a)=100%)
Time spent to complete task (b) + Re-work time required to meet quality standard of task(c) = (d)Total time
(e)Ind. Std (from time study) •/• (d)Total Task time =(f)Productivity %
(g)WTD$/Hr (Weighted $ per hour)=(a) X prevailing wage (total column g = prevailing wage)
(f)Productivity % X (g)WTD $/HR = (h) Commensurate wage earned for each task
NEW Commensurate wage for the job = Total of all wages earned

Effective Date July 1, 1993

Worker's Signature

CJDOL FINAL 7/93

SAMPLE

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job: *#1-Dishwasher*

Complete/[✓ Partial] job, __1__out of___4__tasks:

Component of: *Dishwasher 1*

Task or job description: *Prepares dishes and loads dishwasher in dishroom of XYZ Restaurant*

Analysis of Task(s) to be timed: *Using simulated sample that has been set aside for time study purposes, consisting of:* 2 dozen forks, knives, spoons, 2 dozen dishes, 2 dozen *glasses; worker rinses items and loads into dishwasher.*

NON HANDICAPPED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1 Joe	A 4.75		4.75	
	B 5.25		5.25	
	C 4.85		4.85	
2 Sandy	A 5.60		5.60	
	B 5.75		5.75	
	C 8.25	1.75	6.5	dropped silverware
3 Jane	A 5.10		5.10	
	B 5.5		5.5	
	C 5.25		5.25	
		TOTAL	48.5500	
		AVERAGE TIME	5.3944	
		STD TIME X115%	6.2036	

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: Alice H. Date: May 31, 1993

Title: Training coordinator

CJDOL-FINAL 7/93

SAMPLE

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job: *#2-Dishwasher-pots and pans*

Complete/[✓ Partial] job, __2__out of___4__tasks:

Component of: *Dishwasher 1*

Task or job description· *Cleans pots and pans in dishroom of XYZ Restaurant*

Analysis of Task(s) to be timed: *Using simulated sample that has been set aside for time study purposes, consisting of: 8 different sizes of pots and pans, worker prepares wash area and cleans pots and pans. Dries pots/pans and reshelves.*

NON HANDICAPPED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1 Joe	A 12.25		12.25	
	B 13.50		13.50	
	C 13.85		13.85	
2 Sandy	A 11.85		11.85	
	B 12.25		12.25	
	C 12.0		12.0	
3 Jane	A 13.10		13.10	
	B 14.00		14.00	
	C 13.65		13.65	
		TOTAL	116.45	
		AVERAGE TIME	12.9389	
		STD TIME X115%	14.8797	

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: Alice H. Date: May 31, 1993

Title: Training Coordinator

SAMPLE

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job: *#3-Dish unloader*

Complete/[✓ Partial] job, __3__out of__4__tasks:

Component of: *Dishwasher I*

Task or job description: *Unloads dishwasher in dishroom of XYZ Restaurant*

Analysis of Task(s) to be timed: *Using simulated sample that has been set aside for time study purposes, consisting of: 2 dozen forks, knives, spoons, 2 dozen dishes, 2 dozen glasses; worker unloads dishwasher, restocks and reshelves dishes in correct locations.*

NON HANDICAPPED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1 Joe	A 8.35 m		8.35	
	B 7.85		7.85	
	C 7.75		7.75	
2 Sandy	A 9.10		9.10	
	B 8.85		8.85	
	C 7.75		7.75	
3 Jane	A 8.52		8.52	
	B 8.75		8.75	
	C 8.25		8.25	
		TOTAL	75.17	
		AVERAGE TIME	8.3522	
		STD TIME X115%	9.6050 m	

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: Alice H. Date: May 31, 1993

Title: Training Coordinator

CJDOL:FINAL 7/93

SAMPLE

INDUSTRIAL WORK STANDARD

Elapsed Average Time Study

Task or job: *#4-General Cleanup*

Complete/[✓ Partial] job, __4__out of___4__tasks:

Component of: *Dishwasher I*

Task or job description: *General cleanup of dishroom of XYZ Restaurant*

Analysis of Task(s) to be timed: *Worker cleans dishwashing areas, mops floors, empties trash*

NON HANDICAPPED WORKER	TIME TO COMPLETE	LOST TIME	NET TIME	COMMENTS
1 Joe	A 16.25 m		16.25	
	B 15.85		15.85	
	C 17.10		17.10	
Sandy	A 18.80		18.80	
	B 17.95		17.95	
	C 18.25		18.25	
3 Jane	A 16.30		16.30	
	B 17.50		17.50	
	C 17.90		17.90	
		TOTAL	155.90	
		AVERAGE TIME	17.3222	
		STD TIME X115%	19.9205 m	

Net Industrial Standard Time for Nondisabled Worker = average time X115%
(15% allowance for personal time, fatigue, and delays)

Note: Lost time is unusual delay or interruptions beyond worker's control

Study completed by: Alice H. Date: May 30, 1993

Title: Training Coordinator

CJDOL:FINAL 7/93

SAMPLE

INDIVIDUAL PRODUCTIVITY WORKSHEET FOR HOURLY RATED WORKERS

Workers' Name: Carol R.
Job Title: Dishwasher I
Date of employment: March 1, 1993
Present Hourly wage: $1.85 hr.

Date: July 29, 1993
Rater's Name: Alice H.
Rater's Title: Training Coordinator
Prevailing Wage: $6.00

		a	b	c	d	e	f	g	h
DATE/TIME*	TASK	%	TIME	RE-WORK	TOTAL TIME	IND. STD	PROD. %	WTD $/HR	WAGE
7/29/93 0800	#1-Dishwasher	10	18.25 m	0	18.25 m	6.2036	.3400	$.60	$.2040
7/29/93 1100	#2-Pots and Pans	75	38.60 m	0	38.60 m	14.8797	.3855	$4.50	$1.7348
7/29/93 0930	#3-Unload	15	22.10 m	5.25*	27.35	9.6050	.3512	$.90	$.3161
7/29/93	#4-Cleanup								
									$2.2549
	TOTALS (Col.a,g,h)	100%						$6.00 PREVAILING WAGE	$2.26 COMMENSURATE WAGE

*Misstacked plates and put in incorrect location

Always round wages UP

**=Time of day*
(a) %=Total percentage of time consumer spends on task(s) during a regular work day (total column (a)=100%)
Time spent to complete task (b) + Re-work time required to meet quality standard of task(c) = (d)Total time
(e)Ind. Std (from time study) •/• (d)Total Task time =(f)Productivity %
(g)WTD$/Hr (Weighted $ per hour)=(a) X prevailing wage (total column g = prevailing wage)
(f)Productivity % X (g)WTD $/HR = (h) Commensurate wage earned for each task
NEW Commensurate wage for the job = Total of all wages earned

Effective Date August 1, 1993

Worker's Signature

CJDOL:FIN 7/93

Appendix G: Handy Reference Guide to the Fair Labor Standards Act

APPENDIX G

Handy Reference Guide to the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1282

Handy Reference Guide to the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1282
Revised May 1992

BEST COPY AVAILABLE

Material contained in this publication is in the public domain and may be reproduced, fully or partially, without permission of the Federal Government. Source credit is requested but not required. Permission is required only to reproduce any copyrighted material contained herein.

This material will be made available to sensory impaired individuals upon request.

Voice phone: 202-523-8347

TTD* phone: 202-523-9530

---

*Telecommunications Device for the Deaf.

Handy Reference Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting more than 80 million full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The Office of Personnel Management is responsible for enforcement with regard to all other Federal employees.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off in lieu of cash overtime pay.

Basic Wage Standards

Covered nonexempt workers are entitled to a minimum wage of not less than $4.25 an hour. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek.

Wages required by FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which FLSA does not regulate.

For example, FLSA does not require:

(1) vacation, holiday, severance, or sick pay;
(2) meal or rest periods, holidays off, or vacations;
(3) premium pay for weekend or holiday work;
(4) pay raises or fringe benefits; and
(5) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or commissions in excess of those required by the FLSA. However, some states do have laws under which such claims (sometimes including fringe benefits) may be filed.

Also, FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work if the employee is at least 16 years old.

These matters are for agreement between the employer and the employees or their authorized representatives.

Who is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and —

(1) whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated); or
(2) is engaged in the operation of a hospital, an institution primarily engaged in the care of those who are physically or mentally ill or disabled or aged, and who reside on the premises, a school for children who are mentally or physically disabled or gifted, a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or
(3) is an activity of a public agency.

Construction and laundry/dry cleaning enterprises, which were previously covered regardless of their annual dollar volume of business, are now subject to the $500,000 test.

Any enterprise that was covered by FLSA on March 31, 1990, and that ceased to be covered because of the increase in the enterprise coverage dollar volume test must continue to pay its employees not less than $3.35 an hour, and continues to be subject to the overtime pay, child labor and recordkeeping provisions of FLSA.

Employees of firms which are not covered enterprises under FLSA may still be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters are covered if they (1) receive at least $50 in cash wages in a calendar quarter from their employers, or (2) work a total of more than 8 hours a week for one or more employers.

Tipped Employees

Tipped employees are those who customarily and regularly receive more than $30 a month in tips. The employer may consider tips as part of wages, but such a wage credit must not exceed 50 percent of the minimum wage.

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Employer-Furnished Facilities

The reasonable cost or fair value of board, lodging, or other facilities customarily furnished by the employer for the employee's benefit may be considered part of wages.

Industrial Homework

The performance of certain types of work in an employee's home is prohibited under the law unless the employer has obtained prior certification from the Department of Labor. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry (where safety and health hazards are not involved). The manufacture of women's apparel (and jewelry under hazardous conditions) is generally prohibited. If you have questions on whether a certain type of work is restricted, or who is eligible for a certificate, or how to obtain a certificate, you may contact the local Wage-Hour office.

Subminimum Wage Provisions

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Employment at less than the minimum wage is provided for in order to prevent curtailment of opportunities for employment. Such employment is permitted only under certificates issued by Wage-Hour.

Training Wage Provisions

Under certain conditions, employers may pay a training wage of at least 85% of the applicable minimum wage, or $3.35 an hour, whichever is greater, for up to 90 days, to employees under age 20, except for migrant or seasonal agricultural workers and H-2A nonimmigrant agricultural workers performing work of a temporary or seasonal nature.

An employee who has been paid at the training wage for 90 days may be employed at the training wage for 90 additional days by a different employer, if that employer provides on-the-job training in accordance with rules issued by the Department of Labor.

Employers are prohibited from displacing employees (or reducing their wages or benefits) in order to hire employees at the training wage. In addition, employers are prohibited from hiring employees at the training wage when other employees have been laid off in the previous six months from the positions to be filled at the training wage, or from substantially equivalent positions.

The number of hours of work paid at the training wage cannot exceed 25% of all the hours worked by employees of an establishment in any month.

The training wage provisions expire March 31, 1993.

Exemptions

Some employees are excluded from the overtime pay provisions or both the minimum wage and overtime pay provisions by specific exemptions.

Because exemptions are generally narrowly defined under FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local Wage-Hour offices. Following are examples which are illustrative but do not spell out the conditions for each exemption.

Exemptions from Both Minimum Wage and Overtime Pay

(1) Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales persons, and persons in certain computer-related occupations (as defined in Department of Labor regulations);
(2) Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, switchboard operators of small telephone companies, seamen employed on foreign vessels, and employees engaged in fishing operations;
(3) Farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year;

(4) Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Pay Provisions Only

(1) Certain highly-paid commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks, or farm implements, and who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers;
(2) Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;
(3) Announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations;
(4) Domestic service workers residing in the employers' residences;
(5) Employees of motion picture theaters; and
(6) Farmworkers.

Partial Exemptions from Overtime Pay

(1) Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors.
(2) Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period in lieu of the usual 7-day workweek, if the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.
(3) Employees who lack a high school diploma, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a

workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.

Child Labor Provisions

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and nonfarm jobs declared by the Secretary of Labor as being too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices.

Nonagricultural Jobs (Child Labor)

Regulations governing youth employment in nonfarm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible jobs and hours of work, by age, are as follows:

(1) Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
(2) Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and
(3) Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours.)

Fourteen is the minimum age for most nonfarm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their solely-owned nonfarm business (except in manufacturing or on hazardous jobs); or, gather evergreens and make evergreen wreaths.

Farm Jobs (Child Labor)

In farm work, permissible jobs and hours of work, by age, are as follows:

(1) Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;
(2) Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;
(3) Youths 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with parent's written consent or on the same farm as the parents;
(4) Youths under 12 years old may perform jobs on farms owned or operated by parents or, with parents' written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to both minimum wage and overtime pay provisions, the following records must be kept:

(1) personal information, including employee's name, home address, occupation, sex, and birth date (if under 19 years of age);
(2) hour and day when workweek begins;
(3) total hours worked each workday and each workweek;
(4) total daily or weekly straight-time earnings;
(5) regular hourly pay rate for any week when overtime is worked;
(6) total overtime pay for the workweek;
(7) deductions from or additions to wages;
(8) total wages paid each pay period; and
(9) date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers, and special information is required for homeworkers, for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished, or for employees receiving remedial education.

Terms Used in FLSA

Workweek — A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked — Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is suffered or permitted to work.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (excluding certain statutory exceptions). The following examples are based on a maximum 40-hour workweek.

(1) ***Hourly rate*** — (regular pay rate for an employee paid by the hour). If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid $4.80 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times $4.80, or $7.20, for each hour over 40. Pay for the week would be $192 for the first 40 hours, plus $28.80 for the four hours of overtime—a total of $220.80

(2) ***Piece rate*** — The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in the same week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

Example: An employee paid on a piecework basis works 45 hours in a week and earns $207. The regular rate of pay for that week is $207 divided by 45, or $4.60 an hour. In addition to the straight-time pay, the employee is entitled to $2.30 (half the regular rate) for each hour over 40.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during the overtime hours.

The piece rate must be the one actually paid during nonovertime hours and must be enough to yield at least the minimum wage per hour.

(3) ***Salary*** — the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid $300 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is $6 ($300 divided by 50 hours). In addition to the salary, half the regular rate, or $3 is due for each of the 10 overtime hours, for a total of $330 for the week. If the employee works 60 hours, the regular rate will be $5 ($300 divided by 60). In that case, an additional $2.50 is due for each of the 20 overtime hours, for a total of $350 for the week.

In no case may the regular rate be less than the minimum wage required by FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Enforcement

Wage-Hour's enforcement of FLSA is carried out by investigators stationed across the U.S. As Wage-Hour's authorized representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with FLSA. Where violations are found, they also may recommend changes in employment practices, in order to bring an employer into compliance with FLSA.

It is a violation of FLSA to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under FLSA.

Willful violations may be prosecuted criminally and the violator fined up to $10,000. A second conviction may result in imprisonment.

Violators of the child labor provisions are subject to a civil money penalty of up to $10,000 for each employee who was the subject of a violation.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to civil money penalities of up to $1,000 per violation.

The FLSA prohibits the shipment of goods in interstate commerce which were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

Recovery of Back Wages

Listed below are methods which FLSA provides for recovering unpaid minimum and/or overtime wages.

(1) Wage-Hour may supervise payment of back wages.
(2) The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
(3) An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
(4) The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages.

A 2-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a 3-year statute applies.

Other Labor Laws

In addition to FLSA, Wage-Hour enforces and administers a number of other labor laws. Among these are:

(1) the Davis-Bacon and Related Acts (require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction);
(2) the Walsh-Healey Public Contracts Act (requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal government);
(3) the Service Contract Act (requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal government);
(4) the Contract Work Hours and Safety Standards Act (sets overtime standards for service and construction contracts);

(5) the Immigration and Nationality Act (Wage-Hour is authorized to review the Immigration and Naturalization Service forms (I-9) required under the Act; employers must verify the employment eligibility of all individuals hired, and must keep I-9s on file for at least 3 years and for one year after an employee is terminated);
(6) the Migrant and Seasonal Agricultural Worker Protection Act (protects farm workers by imposing certain requirements on agricultural employers and associations; and by requiring the registration of crewleaders who must also provide the same worker protections);
(7) the H-2A provisions of the Immigration and Nationality Act (provide for the enforcement of contractual obligations of job offers which have been certified to by employers of temporary alien nonimmigrant agricultural workers);
(8) the Wage Garnishment Law (limits amount of an individual's income that may be legally garnished and prohibits the firing of an employee whose pay is garnished for payment of a single debt);
(9) the Employee Polygraph Protection Act (prohibits most private employers from using any type of lie detector test either for pre-employment screening of job applicants or for testing current employees during the course of employment);
(10) the Immigration Nursing Relief Act of 1989 (provides for the enforcement of employment conditions attested to by employers of H-1A temporary alien nonimmigrant registered nurses);
(11) the Immigration Act of 1990 (provides for the enforcement of employment conditions attested to by employers seeking to employ alien crewmembers to perform specified longshore activity at U.S. ports);
(12) the H-1B provisions of the Immigration and Nationality Act (govern enforcement of labor condition applications filed by employers wishing to employ aliens in

specialty occupations and as fashion models of distinguished merit and ability, on H-1B visas); and

(13) section 221 of the Immigration Act of 1990 (governs the filing and enforcement of attestations by employers seeking to use aliens admitted as students on F-1 visas in off-campus work).

More detailed information on FLSA and other laws administered by Wage-Hour is available from local Wage-Hour offices, which are listed in most telephone directories under U.S. Government, Department of Labor, Wage and Hour Division.

Equal Pay Provisions

The equal pay provisions of FLSA prohibit wage differentials based on sex, between men and women employed in the same establishment, on jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. More detailed information is available from its offices which are listed in most telephone directories under U.S. Government.

☆ U.S. G.P.O.: 1992 – 312-411 / 74351

Appendix H: Fair Labor Standards Act of 1938 as Amended

APPENDIX H

The Fair Labor Standards Act of 1938, as Amended

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1318

The Fair Labor Standards Act of 1938, as Amended

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1318
Revised August 1991

THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED[1]

(29 U.S.C. 201, et seq.)

[1] This publication contains the original text of the Fair Labor Standards Act of 1938 as set forth in 52 Stat. 1060, revised to reflect the changes effected by the amendments listed in this footnote, which may be found in official text at the cited pages of the Statutes at Large.

This publication contains 52 Stat. 1060, as amended by:

(1)	The Act of August 9, 1939	53 Stat. 1266
(2)	Section 404 of Reorganization Plan No. II of 1939	53 Stat. 1436
(3)	Sections 3(c)-3(f) of the Act of June 26, 1940	54 Stat. 615
(4)	The Act of October 29, 1941	55 Stat. 756
(5)	Reorganization Plan No. 2 of 1946	60 Stat. 1095
(6)	The Portal-to-Portal Act of 1947	61 Stat. 84
(7)	The Act of July 20, 1949	63 Stat. 446
(8)	The Fair Labor Standards Amendments of 1949	63 Stat. 910
(9)	Reorganization Plan No. 6 of 1950	64 Stat. 1263
(10)	The Fair Labor Standards Amendments of 1955	69 Stat. 711
(11)	The American Samoa Labor Standards Amendments of 1956	70 Stat. 1118
(12)	The Act of August 30, 1957	71 Stat. 514
(13)	The Act of August 25, 1958	72 Stat. 844
(14)	Section 22 of the Act of August 28, 1958	72 Stat. 948
(15)	The Act of July 12, 1960	74 Stat. 417
(16)	The Fair Labor Standards Amendments of 1961	75 Stat. 65
(17)	The Equal Pay Act of 1963	77 Stat. 56
(18)	The Fair Labor Standards Amendments of 1966	80 Stat. 830
(19)	Section 8 of the Department of Transportation Act	80 Stat. 931
(20)	The Act of September 11, 1967, amending Title 5 of the U.S.C.	81 Stat. 222
(21)	Section 906 of the Education Amendments of 1972	86 Stat. 235
(22)	The Fair Labor Standards Amendments of 1974	88 Stat. 55
(23)	The Fair Labor Standards Amendments of 1977	91 Stat. 1245
(24)	Section 1225 of the Panama Canal Act of 1979	93 Stat. 468
(25)	The Fair Labor Standards Amendments of 1985	99 Stat. 787
(26)	The Act of October 16, 1986	100 Stat. 1229
(27)	The Fair Labor Standards Amendments of 1989	103 Stat. 938
(28)	Omnibus Budget Reconciliation Act of 1990	104 Stat. 1388-29
(29)	The Act of November 15, 1990	104 Stat. 2871

The original text of the Fair Labor Standards Act of 1938, as revised by the amendments through 1960, is set in the "Century" typeface. Added or amended language as enacted by subsequent amendments is represented by several different typefaces as follows:

Amendments	*Typeface Used*	*Public Law*	*Date Enacted*	*Statute Citation*
Pre-1961	Century Light			
1961	**Century Boldface**	**87-30**	**5/5/61**	**75 Stat. 65**
1966	*Century Light Italics*	*89-601*	*9/23/66*	*80 Stat. 830*
1972	***Century Boldface Italics***	***92-318***	***6/23/72***	***86 Stat. 235 at 375***
1974	***Century Boldface Italics***	***93-259***	***4/8/74***	***88 Stat. 55***
1977	Helvetica Light	95-151	11/1/77	91 Stat. 1245
1985	**Helvetica Boldface**	**99-150**	**11/13/85**	**99 Stat. 787**
1986	*Helvetica Italics*	*99-486*	*10/16/86*	*100 Stat. 1229*
1989	***Helvetica Boldface Italics***	***101-157***	***11/17/89***	***103 Stat. 938***
1990	***Helvetica Boldface Italics***	***101-508***	***11/5/90***	***104 Stat. 1388-29***
1990	***Helvetica Boldface Italics***	***101-583***	***11/15/90***	***104 Stat. 2871***

In cases where annual changes are to be made in provisions, as in the case of the gradual phase-out of exemptions, the changes are shown immediately following the provision to which they apply and are inclosed in brackets.

The footnotes in this revision show where prior changes have been made and refer to the specific amendments relied upon so that a comparison may be made with the official text.

This revised text has been approved by the Office of the Solicitor, U.S. Department of Labor.

FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED

(29 U.S.C. 201, et seq.)

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938."

Finding and Declaration of Policy

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. ***The Congress further finds that the employment of persons in domestic service in households affects commerce.***

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.[2]

Definitions

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.[3]

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee ***and includes a public agency,***[4] ***but does not include*** any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2), (3), and ***(4), the term*** "employee" ***means*** any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(v) in the Library of Congress;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

---

As amended by section 2 of the Fair Labor Standards Amendments of 1949.

[3] As amended by section 3(a) of the Fair Labor Standards Amendments of 1949.

[4] Public agencies were specifically excluded from the Act's coverage until the Fair Labor Standards Amendments of 1966, when Congress extended coverage to "employees of a State or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence * * *"

(V)[4a] is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.[5]

(4)[5a] (A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate government agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, *or other activity, or branch or group thereof,* in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.[6]

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation,[7] or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor[8] shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor[9] certifying that such person is above the oppressive child labor age. The Secretary of Labor[10] shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor[11] determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

[4a] As added by section 5 of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

[5] Similar language was added to the Act by the Fair Labor Standards Amendments of 1966. Those amendments also excluded from the definition of employee "any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been employed in agriculture less than thirteen weeks during the preceding calendar year." These individuals are now included.

[5a] As added by section 4(a) of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

[6] As amended by section 3(b) of the Fair Labor Standards Amendments of 1949.

[7] As amended by section 3(c) of the Fair Labor Standards Amendments of 1949.

[8] Reorganization Plan No. 2 of 1946 provided that the functions of the Children's Bureau and of the Chief of the Children's Bureau under the Act as originally enacted be transferred to the Secretary of Labor.

[9] Ibid.

[10] Ibid.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Secretary of Labor,[12] to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided,* **That the cost of board, lodging or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further,* That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee.** *In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount* ***in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable wage rate after March 31, 1991,***[12a] *except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.*

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided,* That the sale is recognized as a bona fide retail sale in the industry.[13]

(o) Hours worked.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.[14]

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r)(1) "Enterprise" means the related activities performed (either through unified operation or common control)by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement,

(A) **that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or**

(B) **that it will join with other such establishments in the same industry for the purpose of collective purchasing, or**

(C) **that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.**

(2) For purposes of paragraph (1), *the activities performed by any person or persons—*

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a ***preschool,***[15] *elementary or secondary school, or an institution of higher education (regardless of whether or not*

---

[11] Ibid.

[12] As amended by Reorganization Plan No. 6 of 1950, set out under section 4(a).

[12a] As amended by section 5 of the Fair Labor Standards Amendments of 1989, effective April 1, 1990. Prior to April 1, 1990, the percentage amount was 40.

[13] Section 3(d) of the Fair Labor Standards Amendments of 1949. (The original language of section 3(n) was restored by the Fair Labor Standards Amendments of 1966.)

[15] "A preschool" was added by the Education Amendments of 1972.

such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a state or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit, or

(C) in connection with the activities of a public agency, shall be deemed to be activities performed for a business purpose.

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);[16]

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.[17]

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State, or any interstate governmental agency.

Administration[18]

SEC. 4. (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $______[19] a year.

Excerpts From Reorganization Plan No. 6 of 1950, 64 Stat. 1263

"Except as otherwise provided [with respect to hearing examiners], there are hereby transferred to the Secretary of Labor all functions of all other officers of the Department of Labor and all functions of all agencies and employees of such Department * * *. The Secretary of Labor may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Labor of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan."

(b) The Secretary of Labor[20] may, subject to the civil service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the

---

[16] As amended by section 3(a) of the Fair Labor Standards Amendments of 1989. Prior to April 1, 1990, the dollar volume test for enterprise coverage (except in the case of an enterprise comprised exclusively of one or more retail or service establishments; or one engaged in construction or reconstruction; or one engaged in laundering, cleaning, or repairing clothing or fabrics; or one described in section 3(s)(1)(B) or (C)) was $250,000. For retail enterprises, the dollar volume test was $362,500. There was no dollar volume test for the other enterprises.

[17] As amended by section 3(a) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978. Prior to January 1, 1978, the dollar amount was $20.

[18] Heading revised to reflect changes made by Reorganization Plan No. 6 of 1950.

[19] Pursuant to 5 U.S.C. 5316, the Administrator of the Wage and Hour Division is classified under Level V of the Executive Schedule, for which the annual rate of basic pay is determined under 2 U.S.C. Chapter 11, as adjusted by 5 U.S.C. 5318.

[20] As amended by section 404 of Reorganization Plan No. II of 1939 (53 Stat. 1436) and by Reorganization Plan No. 6 of 1959 (64 Stat.1263).

Classification Act of 1949[21] as amended. The Secretary[22] may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Secretary[23] in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Secretary,[24] no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Secretary[25] shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d)*(1)*The Secretary[26] shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages *and overtime coverage* established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent.[27] *Such report shall also include a summary of the special certificates issued under section 14(b).*

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 14 of this Act.

(e) Whenever the Secretary has reason to believe that in any industry under this Act the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided,* That he may also include in such report information on the increased employment resulting from additional exports in any industry under this Act as he may determine to be pertinent to such report.

(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission[28] is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 16(b) of this Act.

---

[21] As amended by section 1104 of the Act of October 23, 1949 (63 Stat. 972).

[22] See footnote 20.

[23] Ibid.

[24] Ibid.

[25] As amended by Reorganization Plan No. 6 of 1950.

[26] Ibid.

[27] Section 2 of the Fair Labor Standards Amendments of 1955.

[28] The Civil Service Commission was renamed the Office of Personnel Management by Reorganization Plan No. 2 of 1978 (92 Stat. 3783).

Special Industry Committees for *American Samoa*

SEC. 5.[29] (a) The Secretary of Labor[30] shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in ***American Samoa***[31] engaged in commerce or in the production of goods for commerce or **employed in any enterprise engaged in commerce or in the production of goods for commerce,** or the Secretary[32] may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce **or employed in any enterprise engaged in commerce or in the production of goods for commerce** in particular industries. An industry committee appointed under this subsection shall be composed of residents of ***American Samoa*** where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of ***American Samoa.*** In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees[33] shall be subject to the provisions of section 8.

(b) An industry committee shall be appointed by the Secretary[34] without any regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Secretary[35] shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Secretary[36] shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation for their services a reasonable per diem, which the Secretary[37] shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Secretary[38] shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Secretary[39] shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Secretary[40] to furnish additional information to aid it in its deliberations.

Minimum Wages

SEC. 6. (a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, *or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:*

(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending March 31, 1990, not less than $3.80 an hour during the year beginning April 1, 1990, and not less than $4.25 an hour after March 31, 1991;[41]

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Secretary of Labor,[42] or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the

---

[29] Section 5 as amended by section 3(c) of the Act of June 26, 1940 (54 Stat. 615); by section 5 of the Fair Labor Standards Amendments of 1949; by section 4 of the Fair Labor Standards Amendments of 1961; by section 5 of the Fair Labor Standards Amendments of 1974; by section 4(a) of the Fair Labor Standards Amendments of 1989; and as further amended as noted. Paragraphs (b), (c), and (d), (except for the substitution of "Secretary" for "Administrator") read as in the original Act.

[30] See footnote 25.

[31] As amended by section 4(a)(1) of the Fair Labor Standards Amendments of 1989. Prior to November 17, 1989, special industry committee procedures also applied to Puerto Rico and the Virgin Islands, until such time as the mainland minimum wage level was reached.

[32] See footnote 25.

[33] As amended by section 5(a) of the Fair Labor Standards Amendments of 1956.

[34] See footnote 25.

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Ibid.

[39] Ibid.

[40] Ibid.

[41] As amended by section 2 of the Fair Labor Standards Amendments of 1989.

[42] See footnote 25

proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;[43]

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b), not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint *pursuant to sections 5 and 8.* The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection;[44]

(4) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(5) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

(b) Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this Act by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

(c)[45](1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico who is employed by—

(A) the United States,

(B) an establishment that is a hotel, motel or restaurant,

(C) any other retail or service establishment that employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, or

(D) any other industry in which the average hourly wage is greater than or equal to $4.65 an hour.

(2) In the case of any employee in Puerto Rico who is employed in an industry in which the average hourly wage is not less than $4.00 but not more than $4.64, the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1994, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on April 1, 1994.

(3) In the case of an employee in Puerto Rico who is employed in an industry in which the average hourly wage is less than $4.00, except as provided in paragraph (4), the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1995, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on April 1, 1995.

(4) In the case of any employee of the Commonwealth of Puerto Rico, or a municipality or other governmental entity of the Commonwealth, in which the average hourly wage is less than $4.00 an hour and who was brought under the coverage of this section pursuant to an amendment made by the Fair Labor Standards Amendments of 1985 (Public Law 99-150), the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1996, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on April 1, 1996.

(d)[46] (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and

---

[43] Section 3(f) of the Act of June 26, 1940 (54 Stat. 616).

[44] Section 2 of the American Samoa Labor Standards Amendments of 1956, as amended by section 5 of the Fair Labor Standards Amendments of 1961, and by section 4(b)(1)(A) of the Fair Labor Standards Amendments of 1989.

[45] As amended by section 4(b)(2) of the Fair Labor Standards Amendments of 1989.

[46] Subsection (d) added by Equal Pay Act of 1963, 77 Stat. 56 (effective on and after June 11, 1964 except for employees covered by collective bargaining agreements in certain cases).

responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e)(1) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351-357) or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

(f) Any employee—

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute wages for the purposes of title II of such Act, or

(2) who in any workweek—

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under section 6(b).

Maximum Hours

SEC. 7.[47]* (a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, *or is employed in an enterprise engaged in commerce or in the production of goods for commerce,* for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweeks is brought within the purview of this subsection by the amendments made to this Act by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

---

[47] Section 7 as amended by section 7 of the Fair Labor Standards Amendments of 1949, and as further amended as noted. Single asterisk (*) indicates provision amended by the 1949 Act; double asterisk (**) indicates provision added by the 1949 Act. Bold face type indicates amendment made by the Fair Labor Standards Amendments of 1961. Italic type indicates amendment made by the Fair Labor Standards Amendments of 1966. Bold face italic type indicates amendment made by the Fair Labor Standards Amendments of 1974. Helvetica boldface type indicates amendment made by the Fair Labor Standards Amendments of 1985. Helvetica boldface italic type indicates amendment made by the Fair Labor Standards Amendments of 1989.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

*(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks, or

*(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3)[48] by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 6,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

*(c) * * * (Repealed)*

[Note: Section 7(c) (relating to employers employing employees in an industry found by the Secretary to be of a seasonal nature) was repealed by Section 19 of the Fair Labor Standards Amendments of 1974, effective December 31, 1976.]

*(d) * * * (Repealed)*

*[Note: Section 7(d) (relating to employers who do not qualify for the exemption in subsection (c) who employ employees in an industry found by the Secretary "(A) to be characterized by marked annual recurring peaks of operation * * *, or (B) to be of a seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state * * *") was repealed by Section 19 of the Fair Labor Standards Amendments of 1974, effective December 31, 1976.]*

**(e) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

**(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

**(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

**(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor[49] set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary[50]) paid to performers, including announcers, on radio and television programs;

---

[48] Section 212 of the Fair Labor Standards Amendments of 1966 substituted this provision for the complete exemption from overtime contained in former section 13(b)(10) enacted in the 1961 amendments. Former clause (3) of section 7(b) as enacted in the 1938 Act was replaced by new section 7(c) as enacted by section 204(c) of the Fair Labor Standards Amendments of 1966.

[49] See footnote 25.

**(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or **in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

*(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;[51] or

*(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding **the maximum workweek applicable to such employee under subsection (a))**, where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.[52]

(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of **the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in **subsection (a) or (b) of section 6 (whichever may be applicable)** and compensation at not less than one and one-half times such rate for all hours worked in excess of **such maximum** workweek, and (2) provided a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess **of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of **the maximum workweek applicable to such employee under such subsection—**

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided,* That the rate so established shall be authorized by regulation by the Secretary of Labor[53] as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

*(h) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection *(e)* shall be creditable toward overtime compensation payable pursuant to this section.[54]

***(i)* No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the**

---

[50] Ibid.

[51] Paragraphs (6) and (7) together with section 7(h) continue in effect provisions of section 1 of the Act of July 20, 1949 (63 Stat. 446), which Act was repealed as of the effective date of the Fair Labor Standards Amendments of 1949.

[52] Ibid.

[53] See footnote 25.

[54] Amendment provided by section 7 of the Fair Labor Standards Amendments of 1949. See also footnote 51.

regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. *In determining the proportion of compensation representing commission, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.*

(j) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k)[65] *No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—*

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to Section 6(c)(3) of the Fair Labor Standards Amendments of 1974)[66] *in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or*

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(l) No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a).

(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

(n) In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such

---

[65] Effective January 1, 1975, the complete overtime exemption provided by section 6(c)(2)(A) of the Fair Labor Standards Amendments of 1974 was replaced by the more limited exemption in section 7(k). The present overtime standard—the lesser of 216 hours or the average number of hours (as determined by the Secretary of Labor) in tours of duty of employees in work periods of 28 consecutive days—became effective on January 1, 1978. During calendar year 1977 the overtime standard was 216 hours, during 1976 the overtime standard was 232 hours, and during 1975 the overtime standard was 240 hours. The complete overtime exemption remains applicable only to public agencies employing less than 5 employees in fire protection or law enforcement activities. See section 13(b)(20), infra.

[66] The results of the Secretary's study were published in the Federal Register on September 8, 1983. The Secretary determined hours standards for law enforcement employees at 171 and for fire protection employees at 212 in a 28-day period (48 FR 40,518).

employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

(o)[67](1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employees engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) For purposes of this subsection—

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p)[68](1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

---

[67] As added by section 2(a) of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

[68] As added by section 3 of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(q)[59] *Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—*

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

Wage Orders in American Samoa

SEC. 8[60] (a) The policy of this Act with respect to industries or enterprises in ***American Samoa*** engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of *the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 6(a) but for section 6(c).*

The Secretary of Labor[61] shall from time to time convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in ***American Samoa*** engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classification therein, ***and who but for section 6 (a)(3) would be subject to the minimum wage requirements of section 6 (a)(1).*** Minimum rates of wages established in accordance with this section which are not equal to *the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) or section 6(a)* shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary,[62] in his discretion, may order an additional review during any such biennial period.[63]

(b) Upon the convening of any such industry committee, the Secretary[64] shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act.[65] The committee shall recommend to the Secretary[66] the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in ***American Samoa*** a competitive advantage over any industry in the United States outside of ***American Samoa; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a) or 6(b), which would be applicable but for section 6(a)(3), unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.***[66a]

---

[59] As added by section 7 of the Fair Labor Standards Amendments of 1989.

[60] Section 8 as amended by section 4 of the Fair Labor Standards Amendments of 1949; by section 7 of the Fair Labor Standards Amendments of 1961; by section 5(d) of the Fair Labor Standards Amendments of 1974; by section 2(d)(3) of the Fair Labor Standards Amendments of 1977; by section 4(c) of the Fair Labor Standards Amendments of 1989; and as further amended as noted. Prior to November 17, 1989, wage order procedures also applied to Puerto Rico and the Virgin Islands until such time as the mainland minimum wage level was reached. Paragraphs (b), (c), (d), (e), and (f) as amended by the 1949 Act read substantially the same as paragraphs (b)and (c) (except for the parenthetical reference to the minimum wage rate provided in section 6(a), (d), (f) and (g) in the original Act).

[61] See footnote 25.

[62] Act of August 25, 1958 (72 Stat. 844)

[63] As amended by Act of August 25, 1958 (72 Stat. 844).

[64] See footnote 25.

[65] As amended by section 5(b) of the Fair Labor Standards Amendments of 1955.

[66] See footnote 25.

(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that ***in effect under paragraph (1) or (5) of section 6(a) (as the case may be))*** which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee[67] shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Secretary a report containing its findings of fact and recommendations with respect to the matters referred to it. Upon the filing of such report, the Secretary shall publish such recommendations in the Federal Register and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication.[68]

(e) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Secretary[69] finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein.[70]

(f) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Secretary[71] deems reasonably calculated to give general notice to interested persons.

Attendance of Witnesses

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of section 9 and 10 (relating to the attendance of witnesses and the production of books, papers and documents) of the Federal Trade Commission Act of September 16, 1914 as amended (U.S.C., 1934 edition, title 15, sec. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor[72] and the industry committees.

Court Review

SEC. 10.[73] (a) Any person aggrieved by an order of the Secretary issued under section 8 may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify ***(including provision for the payment of an appropriate minimum wage rate),*** or set aside such order in whole or in part, so far as it is applicable to the petitioner.[74] The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

[66a] As amended by section 1 of the Act of November 15, 1990.

[67] As amended by sections 5(c) and 5(d) of the Fair Labor Standards Amendments of 1955 (eliminating review by the Secretary of Labor of the recommendations of the industry committee).

[68] Ibid.

[69] See footnote 25.

[70] As amended by section 5(e) of the Fair Labor Standards Amendments of 1955.

[71] See footnote 25.

[72] Ibid.

[73] Section 10(a) as amended by section 5(f) of the Fair Labor Standards Amendment[illegible] 1955, and as further amended as noted.

[74] Section 22 of the Act of August 28, 1958 (72 Stat. 948).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's[75] order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

Investigations, Inspections, Records, and Homework Regulations

SEC. 11. (a) The Secretary of Labor[76] or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Secretary[77] shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the Secretary[78] shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Secretary of Labor[79] may, for the purpose of carrying out his functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Secretary[80] as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder. **The employer of an employee who performs substitute work described in section 7 (p) (3) may not be required under this subsection to keep a record of the hours of the substitute work.**[81]

(d)The Secretary is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force and effect.[82]

Child Labor Provisions

SEC. 12. (a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further,* That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.[83]

---

[75] See footnote 25.

[76] Ibid.

[77] Ibid.

[78] Ibid.

[79] See footnotes 8 and 25.

[80] See footnote 25

[81] Added by section 3(c)(2) of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

[82] Section 9 of the Fair Labor Standards Amendments of 1949, as amended by Reorganization Plan No. 6 of 1950.

(b) The Secretary of Labor,[84] or any of his authorized representatives, shall make all investigations and inspections under section 11(a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce **or in any enterprise engaged in commerce or in the production of goods for commerce.**[85]

(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

Exemptions

SEC. 13.[86] **(a) The provisions of sections 6 *(except section 6(d) in the case of paragraph (1) of this subsection)*[87] and 7 shall not apply with respect to—**

(1) any employee employed in a bona fide executive, administrative, or professional capacity *(including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools),* **or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or**

(2) (Repealed)***

[Note: Section 13(a)(2) (relating to employees employed by certain retail or service establishments) was repealed, effective April 1, 1990, by section 3(c)(1) of the Fair Labor Standards Amendments of 1989.]

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center,[88] *if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year,* except that the exemption from sections 6 and 7 provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 6, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with th Secretary of the Interior or the Secretary of Agriculture;[89] *or*

(4) (Repealed)***

[Note: Section 13(a)(4) (relating to employees employed by certain retail establishments) was repealed, effective April 1, 1990, by section 3(c)(1) of the Fair Labor Standards Amendments of 1989.]

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent,

---

[83] As amended by section 10(a) of the Fair Labor Standards Amendments of 1949.

[84] See footnotes 8 and 25.

[85] Section 10(b) of the Fair Labor Standards Amendments of 1949 as amended by section 8 of the Fair Labor Standards Amendments of 1961.

[86] Section 13 as amended by section 11 of the Fair Labor Standards Amendments of 1949; by Reorganization Plan No. 6 of 1960; and as further amended by the Fair Labor Standards Amendments of 1961, 1966, 1974, 1977, and 1989.

[87] As amended by the Education Amendments of 1972, 86 Stat. 235 at 375, effective July 1, 1972.

[88] Added by section 11 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.

[89] The last clause of section 13(a)(3) of the Act was added by section 4(a) of the Fair Lab Standards Amendments of 1977, effective January 1, 1978. See also section 13(b)(29) of th Act, as added by the 1977 Amendments.

spouse, child , or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock;[90] *or*

(7) any employee to the extent that such employee is exempted by regulations, order, *or certificate* of the Secretary issued under section 14; or

(8)[91] any employee employed in connection with the publication of any weekly, semi-weekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

*(9) * * * (Repealed)*

[Note: Section 13(a)(9) (relating to motion picture theater employees) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)(27).]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

*(11) * * * (Repealed)*

[Note: Section 13(a)(11) (relating to telegraph agency employees) was repealed by section 10 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption from the overtime provisions only in section 13(b)(23), which was repealed effective May 1, 1976.]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

*(13) * * * (Repealed)*

[Note: Section 13(a)(13) (relating to small logging crews) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in Section 13(b)(28).]

*(14) * * * (Repealed)*

[Note: Section 13(a)(14) (relating to employees employed in growing and harvesting of shade grown tobacco) was repealed by section 9 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for certain tobacco producing employees from the overtime provisions only in section 13(b)(22). The section 13(b)(22) exemption was repealed, effective January 1, 1978, by section 5 of the Fair Labor Standards Amendments of 1977.]

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

(b) The provisions of section 7 shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation[92] has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935:[92a]; or

(2) any employee of an employer *engaged in the operation of a common carrier by rail and* subject to the provisions of part I of the Interstate Commerce Act; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

*(4) * * * (Repealed)*

[Note: Section 13(b)(4) (relating to employees in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof) was repealed, effective May 1, 1976, by section 11 of the Fair Labor Standards Amendments of 1974.]

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

---

[90] Prior to the Fair Labor Standards Amendments of 1966, the section 13(a)(6) exemption was applicable to all agricultural employees.

[91] As amended by the Fair Labor Standards Amendments of 1966 (which deleted the words "printed and" which formerly preceded the word "published").

[92] As amended by the Department of Transportation Act, 80 Stat. 931, which substituted "Secretary of Transportation" for "Interstate Commerce Commission".

[92a] Section 204 of the original Motor Carrier Act is now codified at 49 U.S.C. 3102

(6) any employee employed as a seaman; or

*(7) * * * (Repealed)*

[Note: Section 13(b)(7) (relating to any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier) was repealed, effective May 1, 1976, by section 21 of the Fair Labor Standards Amendments of 1974.[93]]

(8) * * * (Repealed)

[Note: Section 13(b)(8) (relating to any employee employed by a hotel, motel, or restaurant) was repealed, effective January 1, 1979, by section 14 of the Fair Labor Standards Amendments of 1977.]

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decenial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;[94] or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a); *or*

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agriculture purposes,[95] or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1);[96] or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations;[97] or

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup;[98] or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables;[99] or

(17) any driver employed by an employer engaged in the business of operating taxicabs;[100] or

*(18) * * * (Repealed)*

[Note: Section 13(b)(18) (relating to any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering,

---

[93] Prior to the Fair Labor Standards Amendments of 1966, employees of local transit companies were exempt from both the Act's minimum wage and overtime requirements.

[94] Boats were added by the Fair Labor Standards Amendments of 1974. Prior to these Amendments, the overtime exemption in subsection (B) also applied to partsmen and mechanics. An earlier minimum wage exemption for any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks or farm implements was repealed by the Fair Labor Standards Amendments of 1966.

[95] A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1966.

[96] Ibid.

[97] Ibid.

[98] The exemption applicable to the ginning of cotton and the processing of sugar beets and sugar cane was deleted from section 13(b)(15) by the Fair Labor Standards Amendments of 1974 and provision was made for such employees in sections 13(b)(25) and 13(b)(26). The exemptions in sections 13(b)(25) and 13(b)(26) were repealed, effective January 1, 1978, by the Fair Labor Standards Amendments of 1977, and provision was made for such employees in sections 13(i) and 13(j), which were added to the Act by those Amendments.

[99] See footnote 95.

[100] Ibid.

banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs) was repealed, effective May 1, 1976, by section 15 of the Fair Labor Standards Amendments of 1974.][101]

*(19) * * * (Repealed)*

[Note: Section 13(b)(19) (relating to any employee of a bowling establishment) was repealed, effective May 1, 1976, by section 16 of the Fair Labor Standards Amendments of 1974.]

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be;[102] *or*

[Note: Section 6(c)(3) of the Fair Labor Standards Amendments of 1974 provided as follows: "The Secretary of Labor shall in the calendar year beginning January 1, 1976, conduct (A) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in fire protection activities, and (B) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in law enforcement activities (including security personnel in correctional institutions). The Secretary shall publish the results of each such study in the Federal Register." The results of the Secretary's study were published in the Federal Register on September 8, 1983. The Secretary determined hours standards for law enforcement employees at 171 and for fire protection employees at 212 in a 28-day period (48 FR 40,518)]

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(22) * * * (Repealed)

[Note: Section 13(b)(22) (relating to employees employed in the growing and harvesting of shade grown tobacco[103]) was repealed, effective January 1, 1978, by section 5 of the Fair Labor Standards Amendments of 1977.]

*(23) * * * (Repealed)*

[Note: Section 13(b)(23) (relating to any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under section 13(a)(2), who is engaged in handling telegraphic messages for the public[104]*) was repealed, effective May 1, 1976, by section 10 of the Fair Labor Standards Amendments of 1974.]*

(24) any employee who is employed with his spouse by a non-profit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or[105]

(B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25) * * * (Repealed)

[Note: Section 13(b)(25) (relating to any employee engaged in ginning cotton for market in any place of employment located in a county where cotton is grown in commercial quantitites[106]) was repealed by section 6(a) of the Fair Labor Standards Amendments of 1977, and is replaced by new section 13(i), added by section 6(b) of those Amendments, which provides a more limited overtime exemption for such employees. Both changes were effective January 1, 1978.]

(26) * * * (Repealed)

[Note: Section 13(b)(26) (relating to any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugarcane into sugar (other than refined sugar) or syrup was repealed by section 7(a) of the Fair Labor Standards Amendments of 1977, and is replaced by new section 13(j), added by section 7(b) of those Amendments, which provides a more limited overtime exemption for such employees. Both changes were effective January 1, 1978.]

---

[101] Ibid.

[102] Prior to January 1, 1975, section 13(b)(20) exempted "any employee of a public agency who is employed in fire protection or law enforcement activities (including security personnel in correctional institutions)". A partial overtime exemption for public agencies having 5 or more such employees is provided by section 7(k) of the Act.

[103] A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1974.

[104] Ibid.

[105] 120 Cong. Rec. H8600 (March 28, 1974; statement of Congressman Dent) indicates that the word "and" was intended in place of "or".

[106] A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1966.

(27) any employee employed by an establishment which is a motion picture theater;[107] ***or***

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;[108] or

(29)[109] any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.

(c)(1) Except as provided in paragraphs (2) or (4), *the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—*

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A)) required to be paid at the wage rate prescribed by section 6(a)(5),

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 12 relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 12 relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)[110] (A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 12 to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

(i) the crop to be harvested is one with a particularly short harvesting season and the application of section 12 would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) individuals age twelve and above are not available for such employment; and

(v) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that—

(i) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver (I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

---

[107] A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1974.

[108] Ibid.

[109] Added by section 4(b) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978.

[110] As added by section 8 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.

(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer **or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).**

(e) The provisions of section 7 shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 6(a)(3), except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 7 if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 6(a)(3), that economic conditions warrant such action.[111]

(f) The provisions of sections 6, 7, 11, and 12 shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; *Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.*[112, 112a]

(g) The exemption from section 6 provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated.)

(h) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek;

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7.

(i)[113] The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

---

[111] Section 3 of the American Samoa Labor Standards Amendments of 1956.

[112] Section 1(l) of the Act of August 30, 1957 (71 Stat. 514), as amended by section 21(b) of the Act of July 12, 1960 (74 Stat. 417), and by section 213 of the Fair Labor Standards Amendments of 1966, and by Section 1225 of the Panama Canal Act of 1979 (93 Stat. 468).

[112a] Pursuant to Public Law 99-239, 99 Stat. 1770, the Fair Labor Standards Act no longer applies to Eniwetok Atoll and Kwajalein Atoll, effective October 21, 1986. Additionally, pursuant to Public Law 94-241, 90 Stat. 263 (48 U.S.C. 1681, note), effective March 24, 1976, the Fair Labor Standards Act, except for section 6, applies to the Northern Mariana Islands.

[113] Added by section 6(b) of the Fair Labor Standards Amendments of 1977, effective Janaury 1, 1978.

(j)[114] The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

Learners, Apprentices, Students, and Handicapped Workers

SEC. 14.[115] *(a) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.*

(b)(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this Act before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general

---

[114] Added by section 7(b) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978.

[115] As amended by section 24 of the Fair Labor Standards Amendments of 1974.

metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) or not less than $1.30 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B)[116] *If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed* six, *the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed* six—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(D)[117] To minimize paperwork for, and to encourage, small businesses to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only—

(i) a listing of the name, address, and business of the applicant employer,

(ii) a listing of the date the applicant began business, and

(iii) the certification that the employment of such full-time students will not reduce the full-time employment opportunities of persons other than persons employed under special certificates.

---

[116] As amended by section 12 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977. The 1977 amendments substituted "six" for "four."

[117] Added by section 13 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.

(c)[117a]*(1) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—*

(A) lower than the minimum wage applicable under section 6,

(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

(C) related to the individual's productivity.

(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and

(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

(5)(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5, United States Code. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5, United States Code, with respect to such petition within thirty days after assignment.

(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

(E) The administrative law judge shall issue a decision within thirty days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within thirty days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within fifteen days of the date of issuance of the decision by the administrative law judge.

(F) The Secretary, within thirty days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code. An action seeking such review shall be brought within thirty days of a final agency action described in subparagraph (F).

(d) The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.

[117a] As amended by the Act of October 16, 1986 (100 Stat. 1229).

Prohibited Acts

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Secretary of Labor[118] issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;[119]

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Secretary[120] issued under section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;[120a]

(4) to violate any of the provisions of section 12;

(5) to violate any of the provisions of section 11(c) or any regulation or order made or continued in effect under the provisions of section 11(d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.[121]

(b) For the purposes of subsection (a)(1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

Penalties[122]

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 15(a)(3) of this Act shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 15(a)(3), including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained ***against any employer (including a public agency)*** in any ***Federal or State*** court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.[123] The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. **The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation as the case may be, owing to such employee under section 6 or section 7 of this Act by an employer liable therefor under the provisions of this subsection** or (2) legal or equitable

---

[118] See footnote 25.

[119] As amended by section 13(a) of the Fair Labor Standards Amendments of 1949.

[120] See footnote 26.

[120a] Section 8 of the Fair Labor Standards Amendments of 1985 contains special discrimination provisions applicable to public agencies.

[121] As amended by section 13(b) of the Fair Labor Standards Amendments of 1949.

[122] The Portal-to-Portal Act of 1947 relieves employers from certain liabilities and punishments under this Act in circumstances specified in that Act. See also section 2(c) of the Fair Labor Standards Amendments of 1985, which relieves certain public agencies of certain liabilities under this Act prior to April 15, 1986.

[123] Amendment provided by section 5(a) of the Portal-to-Portal Act of 1947.

BEST COPY AVAILABLE

relief is sought as a result of alleged violations of section 15(a)(3).[124]

(c) The Secretary[125] is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of ***the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages.***[126] ***The right provided by subsection (b) to bring an action by or on behalf of any employee*** to recover the liability specified in the first sentence of such subsection ***and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary.*** Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary under this subsection for the purposes of the *statutes*[127] of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.[128]

(d) In any action or proceeding commenced prior to, on, or after the date of enactment of this subsection, no employer shall be subject to any liability or punishment under this Act or the Portal-to-Portal Act of 1947 on account of his failure to comply with any provision or provisions of such Acts (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 13(f) is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 6(a) (3) at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.[129]

(e) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $10,000 for each employee who was the subject of such a violation. Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation.[130] ***In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—***

(1) deducted from any sums owing by the United States to the person charged;

(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(3) ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2)[131]***, to be paid to the Secretary.***

Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated

---

[124] The Fair Labor Standards Amendments of 1977 amended subsection 16(b), effective January 1, 1978, to authorize a private right of action for violations of subsection 15(a)(3) of the Act. Prior to this amendment, only the Secretary of Labor was authorized to bring an action for violations of subsection 15(a)(3).

[125] See footnote 25.

[126] The provision for liquidated damages was added by the Fair Labor Standards Amendments of 1974. These Amendments also deleted the prior requirements that section 16(c) suits be brought only on the written request of the employee and if the case did not involve any issue of law which had not been finally settled by the courts.

[127] Amended by section 601 of the Fair Labor Standards Amendments of 1966.

[128] Section 14 of the Fair Labor Standards Amendments of 1949, as amended by Reorganization Plan No. 6 of 1950 and the Fair Labor Standards Amendments of 1966.

[129] Section 4 of the American Samoa Labor Standards Amendments of 1956, as amended by section 1(2) of the Act of August 30, 1957 (71 Stat. 514), effective November 27, 1957.

[130] As added by section 9 of the Fair Labor Standards Amendments of 1989, and amended by section 3103 of the Omnibus Budget Reconciliation Act of 1990.

[131] As added by section 9 of the Fair Labor Standards Amendments of 1989.

by the Secretary. Except for civil penalties collected for violations of section 12, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 2 of an Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes" (29 U.S.C. 9a). Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.[131a]

Injunction Proceedings

SEC. 17. The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947).[132]

Relation to Other Laws

SEC. 18. *(a)* No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

(b) Notwithstanding any other provision of this Act (other than section 13(f)) or any other law—

(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of title 5, United States Code, or[133]

(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,[134]

shall have his basic compensation fixed or adjusted at a wage rate which is not less than the appropriate wage rate provided for in section 6(a)(1) of this Act (except that the wage rate provided for in section 6(b) shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 7(a)(1) of this Act.

Separability of Provisions

SEC. 19. If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Approved, June 25, 1938.[135]

[131a] As amended by section 3103 of the Omnibus Budget Reconciliation Act of 1990.

[132] As amended by section 12 of the Fair Labor Standards Amendments of 1961.

[133] Paragraph (1), as amended by Public Law 90-83, 81 Stat. 222, omits reference to other employees covered under paragraph (1) of this subsection as enacted in the Fair Labor Standards Amendments of 1966, section 306, whose compensation requirements under such Amendments are now incorporated in 5 U.S.C. 5341 and 5 U.S.C. 5544.

[134] Paragraph (2) was formerly paragraph (3) of subsection (b) as enacted in the Fair Labor Standards Amendments of 1966, section 306. It was renumbered in the amendment by Public Law 90-83, 81 Stat. 222, which omitted the former paragraph (2) referring to employees described in 10 U.S.C. 7474 because of repeal of the latter provision by Public Law 89-554, 80 Stat. 663.

[135] The Fair Labor Standards Amendments of 1949 were approved October 26, 1949; the Fair Labor Standards Amendments of 1955 were approved August 12, 1955; the American Samoa Labor Standards Amendments were approved August 8, 1956; the Fair Labor Standards Amendments of 1961 were approved May 5, 1961; the Fair Labor Standards Amendments of 1966 were approved September 23, 1966; the Fair Labor Standards Amendments of 1974 were approved April 8, 1974; the Fair Labor Standards Amendments of 1977 were approved November 1, 1977; the Fair Labor Standards Amendments of 1985 were approved November 13, 1985; and the Fair Labor Standards Amendments of 1989 were approved November 17, 1989.

ADDITIONAL PROVISIONS OF THE ACT OF NOVEMBER 15, 1990

(104 Stat. 2871)

[PUBLIC LAW 101-583]

[101ST CONGRESS] [FIRST SESSION]

AN ACT

To eliminate "substantial documentary evidence" requirement for minimum wage determination for American Samoa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled.

[Section 1 of the Act of November 15, 1990 amends the Fair Labor Standards Act of 1938, and is incorporated in its proper place in the Act.]

SEC. 2. REGULATIONS CONCERNING CERTAIN EMPLOYEES.

Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206).

Approved November 15, 1990.

LEGISLATIVE HISTORY—S. 2930:

CONGRESSIONAL RECORD, Vol. 136 (1990):
- Aug. 4, considered and passed Senate.
- Oct. 18, considered and passed House, amended.
- Oct. 27, Senate concurred in House amendments.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1989

(103 Stat. 938)

[PUBLIC LAW 101-157]

[101ST CONGRESS] [FIRST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1989."

[Sections 2; 3(a), (c), and (d); 4; 5; 7; and 9 of the Fair Labor Standards Amendments of 1989 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

PRESERVATION OF COVERAGE

SEC. 3 * * *

(b)PRESERVATION OF COVERAGE.—

(1) IN GENERAL.—Any enterprise that on March 31, 1990, was subject to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) and that because of the amendment made by subsection (a) is not subject to such section shall—

(A) pay its employees not less than the minimum wage in effect under such section on March 31, 1990;

(B) pay its employees in accordance with section 7 of such Act (29 U.S.C. 207); and

(C) remain subject to section 12 of such Act (29 U.S.C. 212).

(2) VIOLATIONS.— A violation of paragraph (1) shall be considered a violation of section 6, 7, or 12 of the Fair Labor Standards Act of 1938, as the case may be.

* * * * * * *

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective on April 1, 1990.

TRAINING WAGE

SEC. 6. TRAINING WAGE.

(a) IN GENERAL.—

(1) AUTHORITY.—Any employer may, in lieu of the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206), pay an eligible employee the wage prescribed by paragraph (2)—

(A) while such employee is employed for the period authorized by subsection (g)(1)(B)(i), or

(B) while such employee is engaged in on-the-job training for the period authorized by subsection (g)(1)(B)(ii).

(2) WAGE RATE.—The wage referred to in paragraph (1) shall be a wage—

(A) of not less than $3.35 an hour during the year beginning April 1, 1990; and

(B) beginning April 1, 1991, of not less than $3.35 an hour or 85 percent of the wage prescribed by section 6 of such Act, whichever is greater.

(b) WAGE PERIOD.—An employer may pay an eligible employee the wage authorized by subsection (a) for a period that—

(1) begins on or after April 1, 1990;

(2) does not exceed the maximum period during which an employee may be paid such wage as determined under subsection (g)(1)(B); and

(3) ends before April 1, 1993.

(c) WAGE CONDITIONS.—No eligible employee may be paid the wage authorized by subsection (a) by an employer if—

(1) any other individual has been laid off by such employer from the position to be filled by such eligible employee or from any substantially equivalent position; or

(2) such employer has terminated the employment of any regular employee or otherwise reduced the number of employees with the intention of filling the vacancy so created by hiring an employee to be paid such wage.

(d) LIMITATIONS.—

(1) EMPLOYEE HOURS.— During any month in which employees are to be employed in an establishment under this section, the proportion of employee hours of employment to the total hours of employment of all employees in such establishment may not exceed a proportion equal to one-fourth of the total hours of employment of all employees in such establishment.

(2) DISPLACEMENT.—

(A) PROHIBITION.—No employer may take any action to displace employees (including partial

displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in subsection (a).

(B) DISQUALIFICATION.—If the Secretary determines that an employer has taken an action in violation of subparagraph (A), the Secretary shall issue an order disqualifying such employer from employing any individual at such wage.

(e) NOTICE.—Each employer shall provide to any eligible employee who is to be paid the wage authorized by subsection (a) a written notice before the employee begins employment stating the requirements of this section and the remedies provided by subsection (f) for violations of this section. The Secretary shall provide to employers the text of the notice to be provided under this subsection.

(f) ENFORCEMENT.—Any employer who violates this section shall be considered to have violated section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)). Sections 16 and 17 of such Act (29 U.S.C. 216 and 217) shall apply with respect to the violation.

(g) DEFINITIONS.—For purposes of this section:

(1) ELIGIBLE EMPLOYEE.—

(A) IN GENERAL.—The term "eligible employee" means with respect to an employer an individual who—

(i) is not a migrant agricultural worker or a seasonal agricultural worker (as defined in paragraphs (8) and (10) of section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802 (8) and (10)) without regard to subparagraph (B) of such paragraphs and is not a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a));

(ii) has not attained the age of 20 years; and

(iii) is eligible to be paid the wage authorized by subsection (a) as determined under subparagraph (B).

(B) DURATION.—

(i) An employee shall initially be eligible to be paid the wage authorized by subsection (a) until the employee has been employed a cumulative total of 90 days at such wage.

(ii) An employee who has been employed by an employer at the wage authorized by subsection (a) for the period authorized by clause (i) may be employed by any other employer for an additional 90 days if the employer meets the requirements of subsection (h).

(iii) The total period, as authorized by clauses (i) and (ii), that an employee may be paid the wage authorized by subsection (a) may not exceed 180 days.

(iv) For purposes of this subparagraph, the term "employer" means with respect to an employee an employer who is required to withhold payroll taxes for such employee.

(C) PROOF.—

(i) IN GENERAL.—An individual is responsible for providing the requisite proof of previous period or periods of employment with other employers. An employer's good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subsection (b)(2) with respect to such individual.

(ii) REGULATIONS.—The Secretary of Labor shall issue regulations defining the requisite proof required of an individual. Such regulations shall establish minimal requirements for requisite proof and may prescribe that an accurate list of the individual's employers and a statement of the dates and duration of employment with each employer constitute requisite proof.

(2) ON-THE-JOB TRAINING.—The term "on-the-job training" means training that is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

(h) EMPLOYER REQUIREMENTS.—An employer who wants to employ employees at the wage authorized by subsection (a) for the period authorized by subsection (g)(1)(B)(ii) shall—

(1) notify the Secretary annually of the positions at which such employees are to be employed at such wage,

(2) provide on-the-job training to such employees which meets general criteria of the Secretary issued by regulation after consultation with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives and other interested persons,

(3) keep on file a copy of the training program which the employer will provide such employees,

(4) provide a copy of the training program to the employees,

(5) post in a conspicuous place in places of employment a notice of the types of jobs for which the employer is providing on-the-job training, and

(6) send to the Secretary on an annual basis a copy of such notice.

The Secretary shall make available to the public upon request notices provided to the Secretary by employers in accordance with paragraph (6).

(i) REPORT.—The Secretary of Labor shall report to Congress not later than March 1, 1993, on the effectiveness of the wage authorized by subsection (a). The report shall include—

(1) an analysis of the impact of such wage on employment opportunities for inexperienced workers;

(2) any reduction in employment opportunities for experienced workers resulting from the employment of employees under such wage;

(3) the nature and duration of the training provided under such wage; and

(4) the degree to which employers used the authority to pay such wage.

APPLICATION OF FLSA TO CONGRESSIONAL AND ARCHITECT OF THE CAPITOL EMPLOYEES

SEC. 8. APPLICATION OF RIGHTS AND PROTECTIONS OF FAIR LABOR STANDARDS ACT OF 1938 TO CONGRESSIONAL AND ARCHITECT OF THE CAPITOL EMPLOYEES.

(a) HOUSE EMPLOYEES.—

(1) IN GENERAL.—Not later than 180 days after the date the minimum wage rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is increased pursuant to the amendment made by section 2, the rights and protections under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) shall apply with respect to any employee in an employment position in the House of Representatives and to any employing authority of the House of Representatives.

(2) ADMINISTRATION.—In the administration of this subsection, the remedies and procedures under the Fair Employment Practices Resolution shall be applied. As used in this paragraph, the term "Fair Employment Practices Resolution" means House Resolution 558, One Hundredth Congress, agreed to October 4, 1988, as continued in effect by House Resolution 15, One Hundred First Congress, agreed to January 3, 1989.

(b) ARCHITECT OF THE CAPITOL EMPLOYEES.—

Not later than 180 days after the date the minimum wage rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is increased pursuant to the amendment made by section 2, the rights and protections under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) shall apply with respect to individuals employed under the Office of the Architect of the Capitol.

APPROVED NOVEMBER 17, 1989

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1985

(99 Stat. 787)

[PUBLIC LAW 99-150]

[99TH CONGRESS] [FIRST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to provide rules for overtime compensatory time off for certain public agency employees, to clarify the application of that Act to volunteers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1985."

[Sections 2(a), 3, 4(a) and 5 of the Fair Labor Standards Amendments of 1985 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

COMPENSATORY TIME

SEC. 2. * * *

(b) EXISTING COLLECTIVE BARGAINING AGREEMENTS—A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(o) of the Fair Labor Standards Act of 1938 (as added by subsection (a)).

(c) LIABILITY AND DEFERRED PAYMENT—(1) No State, political subdivision of a State, or interstate governmental agency shall be liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 6 (in the case of a territory or possession of the United States), 7, or 11(c) (as it relates to section 7) of such Act occurring before April 15, 1986, with respect to any employee of the State, political subdivision, or agency who would not have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in sections 775.2 and 775.4 of title 29 of the Code of Federal Regulations.

(2) A State, political subdivision of a State, or interstate governmental agency may defer until August 1, 1986, the payment of monetary overtime compensation under section 7 of the Fair Labor Standards Act of 1938 for hours worked after April 14, 1986.

VOLUNTEERS

(b) REGULATIONS.—Not later than March 15, 1986, the Secretary of Labor shall issue regulations to carry out paragraph (4) of section 3(e) (as amended by subsection (a) of this section).

(c) CURRENT PRACTICE.—If, before April 15, 1986, the practice of a public agency was to treat certain individuals as volunteers, such individuals shall until April 15, 1986, be considered, for purposes of the Fair Labor Standards Act of 1938, as volunteers and not as employees. No public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall be liable for a violation of section 6 occurring before April 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis.

EFFECTIVE DATE

SEC. 6. The amendments made by this Act shall take effect April 15, 1986. The Secretary of Labor shall before such date promulgate such regulations as may be required to implement such amendments.

EFFECT OF AMENDMENTS

SEC. 7. The amendments made by this Act shall not affect whether a public agency which is a State, political subdivision of a State, or an interstate governmental agency is liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 5, 7, or 11 of such Act occurring before April 15, 1986, with respect to any employee of such public agency who would have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in section 775.3 of title 29 of the Code of Federal Regulations.

DISCRIMINATION

SEC. 8. A public agency which is a State, political subdivision of a State, or an interstate governmental agency and which discriminates or has discriminated against an employee with respect to the employee's

wages or other terms or conditions of employment because on or after February 19, 1985, the employee asserted coverage under section 7 of the Fair Labor Standards Act of 1938 shall be held to have violated section 15(a)(3) of such Act. The protection against discrimination afforded by the preceding sentence shall be available after August 1, 1986, only for an employee who takes an action described in section 15(a)(3) of such Act.

Approved November 13, 1985

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1977

(91 Stat. 1245)

[PUBLIC LAW 95-151]

[95TH CONGRESS] [FIRST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1977".

[Sections 2(a) through 2(d) and sections 3 through 14, inclusive, of the Fair Labor Standards Amendments of 1977 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

Increase in Minimum Wage

SEC. 2. * * *

(e)(1) There is established the Minimum Wage Study Commission (hereinafter in this subsection referred to as the "Commission") which shall conduct a study of the Fair Labor Standards Act of 1938 and the social, political, and economic ramifications of the minimum wage, overtime, and other requirements of that Act. Such study shall include but not be limited to—

(A) the beneficial effects of the minimum wage, including its effect in ameliorating poverty among working citizens;

(B) the inflationary impact (if any) of increases in the minimum wage prescribed by that Act;

(C) the effect (if any) such increases have on wages paid employees at a rate in excess of the rate prescribed by that Act;

(D) the economic consequence (if any) of authorizing an automatic increase in the rate prescribed in that Act on the basis of an increase in a wage, price, or other index;

(E) the employment and unemployment effects (if any) of providing a different minimum wage for youth, and the employment and unemployment effects (if any) on handicapped and aged individuals of an increase in such rate and of providing a different minimum wage rate for such individuals;

(F) the effect (if any) of the full-time student certification program on employment and unemployment;

(G) the employment and unemployment effects (if any) of the minimum wage;

(H) the exemptions from the minimum wage and overtime requirements of that Act;

(I) the relationship (if any) between the Federal minimum wage rates and public assistance programs, including the extent to which employees at such rates are also eligible to receive food stamps and other public assistance;

(J) the overall level of noncompliance with that Act; and

(K) the demographic profile of minimum wage workers.

(2) The Commission shall conduct a study concerning the extent to which the exemptions from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938 may apply to employees of conglomerates, and shall make a report, within one year after the date of the appointment of the members of the Commission, of the results of such study. For the purposes of this paragraph a "conglomerate" means an establishment (A) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to the activities of the establishment employing such employees and (B) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $100,000,000 (exclusive of excise taxes at the retail level which are separately stated). The report shall include an analysis of the effects of eliminating the exemptions from the minimum wage and overtime requirements of such Act that may currently apply to the employees of such conglomerates.

(3) The Commission shall make a report of the results of the study conducted pursuant to paragraph (1) thirty-six months after the date of the appointment of the members of the Commission. The report shall include such recommendations for legislation as the Commission determines are appropriate. The Commission may make interim or additional reports which it determines are appropriate. Each report shall be made to the President and to the Congress. The Commission shall cease to exist thirty days after the submission of the report required by this paragraph.

(4)(A) The Commission shall consist of eight members as follows:

(i) Two members appointed by the Secretary of Labor.

(ii) Two members appointed by the Secretary of Commerce.

(iii) Two members appointed by the Secretary of Agriculture.

(iv) Two members appointed by the Secretary of Health, Education, and Welfare.

The appointments authorized under this paragraph shall be made within 180 days after the date of enactment of this subsection.

(B) The Chairperson shall be selected by the members of the Commission. Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(C)(i) Except as provided in clause (ii), members of the Commission who are officers or employees of the Federal Government shall serve without compensation. Other members, while engaged in the activities of the Commission, shall be paid at a rate equal to the per diem equivalent of the annual rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(ii) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(5)(A) The Commission may prescribe such rules as may be necessary to carry out its duties under this subsection.

(B) The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it deems advisable.

(C) Upon request of the Commission, the head of any Federal department or agency is authorized to detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist it in carrying out its duties under this subsection.

(D) The Department of Labor shall furnish such professional, technical, and research assistance as required by the Commission.

(E) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request to carry out its duties under this subsection.

(F) The Commission may secure directly from any department or agency of the United States such information as the Commission may require to carry out its duties under this subsection. Upon request of the Commission, the head of any such department or agency shall furnish such information to the Commission.

(G) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(6)(A) The Chairperson may appoint an executive director of the Commission who shall perform such duties as the Chairperson may prescribe.

(B) With approval of the Chairperson, the executive director may appoint and fix the pay of such clerical personnel as are necessary for the Commission to carry out its duties.

(C) The executive director and staff shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the annual rate payable for grade GS-18 of the General Schedule under section 5332 of such title.

(D) The executive director, with the concurrence of the Chairperson, may obtain temporary and intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

Effective Date

SEC. 15. (a) Except as provided in sections 3, 14, and subsection (b) of this section, the amendments made by this Act shall take effect January 1, 1978.

(b) The amendments made by sections 8, 9, 11, 12, and 13 shall take effect on the date of the enactment of this Act.

(c) On and after the date of the enactment of this Act, the Secretary of Labor shall take such administrative action as may be necessary for the implementation of the amendments made by this Act.

Approved November 1, 1977.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1974

(88 Stat. 55)

[PUBLIC LAW 93-259]

[93RD CONGRESS] [2ND SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1974".

[Sections 2 through 6(d)(1) and sections 7 through 27, inclusive, of the Fair Labor Standards Amendments of 1974 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act. Section 6(d)(2)(A) and (B) amends the Portal-to-Portal Act of 1947 and is set forth below.]

Federal and State Employees

*SEC. 6. * * **

(2)(A) Section 6 of the Portal-to-Portal Pay Act of 1947 is amended by striking out the period at the end of paragraph (c) and by inserting in lieu thereof a semicolon and by adding after such paragraph the following:

"(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspensions shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction."

(B) Section 11 of such Act is amended by striking out "(b)" after "section 16".

Effective Date

SEC. 29. (a) Except as otherwise specifically provided, the amendments made by this Act shall take effect on May 1, 1974.

(b) Notwithstanding subsection (a), on and after the date of the enactment of this Act the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act.

Approved April 8, 1974.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1966

(80 Stat. 830)

[PUBLIC LAW 89-601]

[89TH CONGRESS] [2ND SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to extend its protection to additional employees, to raise the minimum wage, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1966".

[Sections 101 to 501, inclusive, and section 601 (a) of the Fair Labor Standards Amendments of 1966 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

STATUTE OF LIMITATIONS

SEC. 601. * * *

(b) Section 6(a) of the Portal-to-Portal Act of 1947 (Public Law 49, Eightieth Congress) is amended by inserting before the semicolon at the end thereof the following: ", except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued".

EFFECTIVE DATE

SEC. 602. Except as otherwise provided in this Act, the amendments made by this Act shall take effect on February 1, 1967. On and after the date of the enactment of this Act the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act.

STUDY OF EXCESSIVE OVERTIME

SEC. 603. The Secretary of Labor is hereby instructed to commence immediately a complete study of present practices dealing with overtime payments for work in excess of forty hours per week and the extent to which such overtime work impedes the creation of new job opportunities in American industry. The Secretary is further instructed to report to the Congress by July 1, 1967, the findings of such survey with appropriate recommendations.

CANAL ZONE EMPLOYEES AND PANAMA CANAL STUDY

SEC. 604. The Secretary of Labor, in cooperation with the Secretary of Defense and the Secretary of State, shall (1) undertake a study with respect to (A) wage rates payable to Federal employees in the Canal Zone engaged in employment of the kind described in paragraph (7) of section 202 of the Classification Act of 1949 (5 U.S.C. 1082(7)) and (B) the requirements of an effective and economical operation of the Panama Canal, and (2) report to the Congress not later than July 1, 1968, the results of his study together with such recommendations as he may deem appropriate.

STUDY OF WAGES PAID HANDICAPPED CLIENTS IN SHELTERED WORKSHOPS

SEC. 605. The Secretary of Labor is hereby instructed to commence immediately a complete study of wage payments to handicapped clients of sheltered workshops and of the feasibility of raising existing wage standards in such workshops. The Secretary is further instructed to report to the Congress by July 1, 1967, the findings of such study with appropriate recommendations.

PREVENTION OF DISCRIMINATION BECAUSE OF AGE

SEC. 606. The Secretary of Labor is hereby directed to submit to the Congress not later than January 1, 1967, his specific legislative recommendations for implementing the conclusions and recommendations contained in his report on age discrimination in employment made pursuant to section 715 of Public Law 88-352. Such legislative recommendations shall include, without limitation, provisions specifying appropriate enforcement procedures, a particular administering agency, and the standards, coverage, and exemptions, if any, to be included in the proposed enactment.

Approved September 23, 1966.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1961

(75 Stat. 65)

[PUBLIC LAW 87-30]

[87TH CONGRESS] [1ST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938, as amended, to provide coverage for employees of large enterprises engaged in retail trade or service and of other employers engaged in commerce or in the production of goods for commerce, to increase the minimum wage under the Act to $1.25 an hour, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1961".

[Sections 2 to 12, inclusive, of the Fair Labor Standards Amendments of 1961 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

EFFECTIVE DATE

SEC. 14. The amendments made by this Act shall take effect upon the expiration of one hundred and twenty days after the date of its enactment, except as otherwise provided in such amendments and except that the authority to promulgate necessary rules, regulations, or orders with regard to amendments made by this Act, under the Fair Labor Standards Act of 1938 and amendments thereto, including amendments made by this Act, may be exercised by the Secretary on and after the date of enactment of this Act.

Approved May 5, 1961.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1949

(63 Stat. 917)

[PUBLIC LAW 398—81ST CONGRESS]

[CHAPTER 736—1ST SESSION]

AN ACT

To provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1949".

[Sections 2 to 15, inclusive, of the Fair Labor Standards Amendments of 1949 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

MISCELLANEOUS AND EFFECTIVE DATE

SEC. 16. (a) The amendments made by this Act shall take effect upon the expiration of ninety days from the date of its enactment; except that the amendment made by section 4 shall take effect on the date of its enactment.

(b) Except as provided in section 3(o) and in the last sentence of section 16(c) of the Fair Labor Standards Act of 1938, as amended, no amendment made by this Act shall be construed as amending, modifying, or repealing any provision of the Portal-to-Portal Act of 1947.

(c) Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this Act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this Act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this Act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this Act.[1]

(d) No amendment made by this Act shall affect any penalty or liability with respect to any act or omission occurring prior to the effective date of this Act; but, after the expiration of two years from such effective date, no action shall be instituted under section 16(b) of the Fair Labor Standards Act of 1938, as amended, with respect to any liability accruing thereunder for any act or omission occurring prior to the effective date of this Act.

(e) No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended (in any action or proceeding commenced prior to or on or after the effective date of this Act), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949 for such work was at least equal to the compensation which would have been payable for such work had section 7(d) (6) and (7) and section 7(g) of the Fair Labor Standards Act of 1938, as amended, been in effect at the time of such payment.

(f) Public Law 177, Eighty-first Congress, approved July 20, 1949, is hereby repealed as of the effective date of this Act.[2]

Approved, October 26, 1949.

---

[1] Effective May 24, 1950, all functions of Administrator were transferred to the Secretary of Labor by Reorganization Plan No. 6 of 1950, 64 Stat. 1263. See text set out under section 4(a) of the Fair Labor Standards Act.

[2] The provisions of the repealed statute are now contained in substance in sections 7(e)(5), (6), (7), and (h) of the Fair Labor Standards Act, as amended.

PERTINENT PROVISIONS AFFECTING THE FAIR LABOR STANDARDS ACT FROM THE PORTAL-TO-PORTAL ACT OF 1947

(61 Stat. 84)

[PUBLIC LAW 49—80TH CONGRESS]

[CHAPTER 52—1ST SESSION]
[H.R. 2157]

AN ACT

To relieve employers from certain liabilities and punishments under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PART I

FINDINGS AND POLICY

SECTION 1. (a) The Congress hereby finds that the Fair Labor Standards Act of 1938, as amended, has been interpreted judicially in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand, (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; (3) there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; (5) there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in; (6) voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created; (7) the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged; (8) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid; (9) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and (10) serious and adverse effects upon the revenues of Federal, State, and local governments would occur.

The Congress further finds that all of the foregoing constitutes a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce.

The Congress, therefore, further finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this Act be enacted.

The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey and Bacon-Davis Acts and that it is therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this Act shall apply to the Walsh-Healey Act and the Bacon-Davis Act.

(b) It is hereby declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils (1) to relieve and protect interstate commerce from practices which burden and obstruct it; (2) to protect the right of collective bargaining; and (3) to define and limit the jurisdiction of the courts.

* * * * *

PART III

FUTURE CLAIMS

SEC. 4. RELIEF FROM CERTAIN FUTURE CLAIMS UNDER THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED, THE WALSH-HEALEY ACT, AND THE BACON-DAVIS ACT.—

(a) Except as provided in subsection (b), no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after the date of the enactment of this Act—

(1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) activities which are preliminary to or postliminary to said principal activity or activities,

which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

(b) Notwithstanding the provisions of subsection (a) which relieve an employer from liability and punishment with respect to an activity, the employer shall not be so relieved if such activity is compensable by either—

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(c) For the purposes of subsection (b), an activity shall be considered as compensable under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

(d) In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, of the Walsh-Healey Act, or of the Bacon-Davis Act, in determining the time for which an employer employs an employee with respect to walking, riding, traveling or other preliminary or postliminary activities described in subsection (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of subsections (b) and (c) of this section.

PART IV

MISCELLANEOUS

* * * * *

SEC. 6. STATUTE OF LIMITATIONS.—Any action commenced on or after the date of the enactment of this Act to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, *except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;*[1]

* * * * *

(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.[2]

SEC. 7. DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS.—In determining when an action is commenced for the purposes of section 6, an action commenced on or after the date of the enactment of this Act under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant—

---

[1] As amended by section 601 of the Fair Labor Standards Amendments of 1966, 80 Stat. 830.

[2] Added by the Fair Labor Standards Amendments of 1974, 88 Stat. 55.

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

* * * * *

SEC. 10. RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.—

(a) In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be—

(1) in the case of the Fair Labor Standards Act of 1938, as amended—the Administrator of the Wage and Hour Division of the Department of Labor;

* * * * *

SEC. 11. LIQUIDATED DAMAGES.—In any action commenced prior to or on or after the date of the enactment of this Act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 16[4] of such Act.

* * * * *

SEC. 13. DEFINITIONS.—

(a) When the terms "employer", "employee", and "wage" are used in this Act in relation to the Fair Labor Standards Act of 1938, as amended, they shall have the same meaning as when used in such Act of 1938.

* * * * *

(e) As used in section 6 the term "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

SEC. 14 SEPARABILITY.—If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 15. SHORT TITLE.—This Act may be cited as the "Portal-to-Portal Act of 1947".

Approved May 14, 1947.

---

[4] The Fair Labor Standards Amendments of 1974 struck "(b)" after "section 16".

ADDITIONAL PROVISIONS OF EQUAL PAY ACT OF 1963

(77 Stat. 56)

[PUBLIC LAW 88-38]

[88TH CONGRESS, S. 1409]

[JUNE 10, 1963]

AN ACT

To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Pay Act of 1963".

DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex—

(1) depresses wages and living standards for employees necessary for their health and efficiency;

(2) prevents the maximum utilization of the available labor resources;

(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

(4) burdens commerce and the free flow of goods in commerce; and

(5) constitutes an unfair method of competition.

(b) It is hereby declared to be the policy of this Act, through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.

[Section 3 of the Equal Pay Act of 1963 amends section 6 of the Fair Labor Standards Act by adding a new subsection (d). The amendment is incorporated in the revised text of the Act.]

EFFECTIVE DATE

SEC. 4. The amendments made by this Act shall take effect upon the expiration of one year from the date of its enactment: *Provided,* That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act, entered into by a labor organization (as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended), the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur.

Approved June 10, 1963, 12 m.

*U.S. Government Printing Office: 1991 — 282-149/54617

Appendix I: Interpretative Bulletin, Part 785: Hour Worked Under the FLSA

APPENDIX I

Interpretative Bulletin, Part 785
Hours Worked Under the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1312

Interpretative Bulletin, Part 785: Hours Worked Under the Fair Labor Standards Act of 1938, As Amended

---

Title 29, Part 785 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1312
(Reprinted December 1986)

DEPARTMENT OF LABOR
UNITED STATES OF AMERICA

This publication conforms to the Code of Federal Regulations as of November 21, 1986, the date this reprint was authorized.

Material contained in this publication is in the public domain and may be reproduced, fully or partially, without permission of the Federal Government. Source credit is requested but not required. Permission is required only to reproduce any copyrighted material contained herein.

This material will be made available to sensory impaired individuals upon request.
Voice phone: 202-523-8347
TDD* phone: 202-523-9530

Part 785—Interpretative Bulletin on Hours Worked

Subpart A—GENERAL CONSIDERATIONS

Sec.
785.1 Introductory statement.
785.2 Decisions on interpretations; use of interpretations.
785.3 Period of effectiveness of interpretations.
785.4 Application to Walsh-Healey Public Contracts Act.

Subpart B—PRINCIPLES FOR DETERMINATION OF HOURS WORKED

785.5 General requirements of sections 6 and 7 of the Fair Labor Standards Act.
785.6 Definition of "employ" and partial definition of "hours worked".
785.7 Judicial construction.
785.8 Effect of custom, contract, or agreement.
785.9 Statutory exceptions.

Subpart C—APPLICATION OF PRINCIPLES

785.10 Scope of subpart.

Employees "Suffered or Permitted" To Work

785.11 General.
785.12 Work performed away from the premises or job site.
785.13 Duty of management.

Waiting Time

785.14 General.
785.15 On duty.
785.16 Off duty.
785.17 On-call time.

Rest and Meal Periods

785.18 Rest.
785.19 Meal.

Sleeping Time and Certain Other Activities

785.20 General.
785.21 Less than 24-hour duty.
785.22 Duty of 24 hours or more.
785.23 Employees residing on employer's premises or working at home.

Preparatory and Concluding Activities

785.24 Principles noted in Portal-to-Portal Bulletin.
785.25 Illustrative U.S. Supreme Court decisions.
785.26 Section 3(o) of the Fair Labor Standards Act.

Lectures, Meetings, and Training Programs

785.27 General.
785.28 Involuntary attendance.
785.29 Training directly related to employee's job.
785.30 Independent training.
785.31 Special situations.
785.32 Apprenticeship training.

Travel Time

785.33 General.
785.34 Effect of section 4 of the Portal-to-Portal Act.
785.35 Home to work; ordinary situation.
785.36 Home to work in emergency situations.
785.37 Home to work on special one-day assignment in another city.
785.38 Travel that is all in the day's work.
785.39 Travel away from home community.
785.40 When private automobile is used in travel away from home community.
785.41 Work performed while traveling.

Adjusting Grievances, Medical Attention, Civic and Charitable Work, and Suggestion Systems

785.42 Adjusting grievances.
785.43 Medical attention.
785.44 Civic and charitable work.
785.45 Suggestion systems.

Subpart D—RECORDING WORKING TIME

785.46 Applicable regulations governing keeping of records.
785.47 Where records show insubstantial or insignificant periods of time.
785.48 Use of time clocks.

Subpart E—MISCELLANEOUS PROVISIONS

785.49 Applicable provisions of the Fair Labor Standards Act.
785.50 Section 4 of the Portal-to-Portal Act.

Authority: The provisions of this Part 785 issued under 52 Stat. 1060; 29 U.S.C. 201–219.

Sources: The provisions of this Part 785 appear at 26 F.R. 190, Jan. 11, 1961, unless otherwise noted.

BEST COPY AVAILABLE

Subpart A—GENERAL CONSIDERATIONS

Section 785.1—INTRODUCTORY STATEMENT.

Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) requires that each employee, not specifically exempted, who is engaged in commerce, or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce, or in the production of goods for commerce receive a specified minimum wage. Section 7 of the Act (29 U.S.C. 207) provides that persons may not be employed for more than a stated number of hours a week without receiving at least one and one-half times their regular rate of pay for the overtime hours. The amount of money an employee should receive cannot be determined without knowing the number of hours worked. This part discusses the principles involved in determining what constitutes working time. It also seeks to apply these principles to situations that frequently arise. It cannot include every possible situation. No inference should be drawn from the fact that a subject or an illustration is omitted. If doubt arises inquiries should be sent to the Administrator of the Wage and Hour Division, United States Department of Labor, Washington, D.C. 20210, or to any Regional Office of the Division.

[26 F.R. 7732, Aug. 18, 1961, 35 F.R. 15289, Oct. 1, 1970]

Section 785.2—DECISIONS ON INTERPRETATIONS; USE OF INTERPRETATIONS.

The ultimate decisions on interpretations of the act are made by the courts. The Administrator must determine in the first instance the positions he will take in the enforcement of the act. The regulations in this part seek to inform the public of such positions. It should thus provide a "practical guide for employers and employees as to how the office representing the public interest in its enforcement will seek to apply it." (Skidmore v. Swift, 323 U.S. 134, 138 (1944))

Section 785.3—PERIOD OF EFFECTIVENESS OF INTERPRETATIONS.

These interpretations will remain in effect until they are rescinded, modified or withdrawn. This will be done when and if the Administrator concludes upon re-examination, or in the light of judicial decision, that a particular interpretation, ruling or enforcement policy is incorrect or unwarranted. All other rulings, interpretations or enforcement policies inconsistent with any portion of this part are superseded by it. The Portal-to-Portal Bulletin (Part 790 of this chapter) is still in effect except insofar as it may not be consistent with any portion hereof. The applicable statutory provisions are set forth in § 785.50.

Section 785.4—APPLICATION TO WALSH-HEALEY PUBLIC CONTRACTS ACT.

The principles set forth in this part are also followed by the Administrator of the Wage and Hour Division in determining hours worked by employees performing work subject to the provisions of the Walsh-Healey Public Contracts Act.

[35 F.R. 15289, Oct. 1, 1970]

Subpart B—PRINCIPLES FOR DETERMINATION OF HOURS WORKED

Section 785.5—GENERAL REQUIREMENTS OF SECTIONS 6 AND 7 OF THE FAIR LABOR STANDARDS ACT.

Section 6 requires the payment of a minimum wage by an employer to his employees who are subject to the act. Section 7 prohibits their employment for more than a specified number of hours per week without proper overtime compensation.

[26 F.R. 7732, Aug. 18, 1961]

Section 785.6—DEFINITION OF "EMPLOY" AND PARTIAL DEFINITION OF "HOURS WORKED".

By statutory definition the term "employ" includes (section 3(g)) "to suffer or permit to work." The act, however, contains no definition of "work." Section 3(o) of the Fair Labor Standards Act contains a partial definition of "hours worked" in the form of a limited exception for clothes-changing and wash-up time.

Section 785.7—JUDICIAL CONSTRUCTION.

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer or his business." (Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123, 321 U.S. 590 (1944).) Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." (Armour & Co. v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift, 323 U.S. 134 (1944).) The workweek ordinarily includes "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." (Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).) The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See § 785.34.

Section 785.8—EFFECT OF CUSTOM, CONTRACT, OR AGREEMENT.

The principles are applicable even though there may be a custom, contract, or agreement not to pay for the time so spent, with special statutory exceptions discussed in §§ 785.9 and 785.26.

[35 F.R. 15289, Oct. 1, 1970]

Section 785.9—STATUTORY EXCEPTIONS.

(a) *The Portal-to-Portal Act.* The Portal-to-Portal Act (secs. 1–13, 61 Stat. 84–89, 29 U.S.C. 251-262) eliminates from working time certain travel and walking time and other similar "preliminary" and "postliminary" activities performed "prior" or "subsequent" to the "workday" that are not made compensable by contract, custom, or practice. It should be noted that "preliminary" activities do not include "principal" activities. See §§ 790.6 to 790.8 of this chapter. Section 4 of the Portal-to-Portal Act does not affect the computation of hours worked within the "workday." "Workday," in general, means the period between "the time on any particular workday at which such employee commences [his] principal activity or activities" and "the time on any particular workday at which he ceases such principal activity or activities." The "workday" may thus be longer than the employee's scheduled shift, hours, tour of duty, or time on the production line. Also, its duration may vary from day to day depending upon when the employee commences or ceases his "principal" activities. With respect to time spent in any "preliminary" or "postliminary" activity compensable by contract, custom, or practice, the Portal-to-Portal Act requires that such time must also be counted for purposes of the Fair Labor Standards Act. There are, however, limitations on this requirement. The "preliminary" or "postliminary" activity in question must be engaged in during the portion of the day with respect to which it is made compensable by the contract, custom, or practice. Also, only the amount of time allowed by the contract or under the custom or practice is required to be counted. If, for example, the time allowed is 15 minutes but the activity takes 25 minutes, the time to be added to other working time would be limited to 15 minutes. (Galvin v. National Biscuit Co., 82 F. Supp. 535 (S.D.N.Y. 1949) appeal dismissed, 177 F. 2d 963 (C.A. 2, 1949))

(b) *Section 3(o) of the Fair Labor Standards Act.* Section 3(o) gives statutory effect, as explained in § 785.26, to the exclusion from measured working time of certain clothes-changing and washing time at the beginning or the end of the workday by the parties to collective bargaining agreements.

[30 F.R. 9912, Aug. 10, 1965]

Subpart C—APPLICATION OF PRINCIPLES

Section 785.10—SCOPE OF SUBPART.

This subpart applies the principles to the problems which arise frequently.

EMPLOYEES "SUFFERED OR PERMITTED" TO WORK

Section 785.11—GENERAL.

Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time. (Handler v. Thrasher, 191 F. 2d 120 (C.A. 10, 1951); Republican Publishing Co. v. American Newspaper Guild, 172 F. 2d 943 (C.A. 1, 1949); Kappler v. Republic Pictures Corp., 59 F. Supp. 112 (S.D. Iowa 1945), aff'd 151 F. 2d 543 (C.A. 8, 1945); 327 U.S. 757 (1946); Hogue v. National Automotive Parts Ass'n, 87 F. Supp. 816 (E.D. Mich. 1949); Barker v. Georgia Power & Light Co., 2 W.H. Cases 486; 5 CCH Labor Cases, para. 61,095 (M.D. Ga. 1942); Steger v. Beard & Stone Electric Co., Inc., 1 W.H. Cases 593; 4 Labor Cases 60,643 (N.D. Texas 1941))

Section 785.12—WORK PERFORMED AWAY FROM THE PREMISES OR JOB SITE.

The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

Section 785.13—DUTY OF MANAGEMENT.

In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

WAITING TIME

Section 785.14—GENERAL.

Whether waiting time is time worked under the act depends upon particular circumstances. The determination involves "scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait, or they may show that he waited to be engaged." (Skidmore v. Swift, 323 U.S. 134 (1944)) Such questions "must be determined in accordance with common sense and the general concept of work or employment." (Central Mo. Tel. Co. v. Conwell, 170 F. 2d 641 (C.A. 8, 1948))

Section 785.15—ON DUTY.

A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, a fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait. (See: Skidmore v. Swift, 323 U.S. 134, 137 (1944); Wright v. Carrigg, 275 F. 2d 448, 14 W.H. Cases (C.A. 4, 1960); Mitchell v. Wigger, 39 Labor Cases, para. 66,278, 14 W.H. Cases 534 (D.N.M. 1960); Mitchell v. Nicholson, 179 F. Supp. 292, 14 W.H. Cases 487 (W.D.N.C. 1959))

Section 785.16—OFF DUTY.

(a) *General.* Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) *Truck drivers; specific examples.* A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Washington, D.C., to New York City, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty until 6 p.m. when he again goes on duty for the return trip, the idle time is not working time. He is waiting to be engaged. (Skidmore v. Swift, 323 U.S. 134, 137 (1944); Walling v. Dunbar Transfer & Storage, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); Gifford v. Chapman, 6 W.H. Cases 806; 12 Labor Cases para. 63,661 (W.D. Okla. 1947); Thompson v. Daugherty, 40 F. Supp. 279 (D. Md. 1941))

Section 785.17—ON-CALL TIME.

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call." An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (Armour & Co. v. Wantock, 323 U.S. 126 (1944); Handler v. Thrasher, 191 F. 2d 120 (C.A. 10, 1951); Walling v. Bank of Waynesboro, Georgia, 61 F. Supp. 384 (S.D. Ga. 1945))

REST AND MEAL PERIODS

Section 785.18—REST.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (Mitchell v. Greinetz, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); Ballard v. Consolidated Steel Corp., Ltd., 61 F. Supp. 996 (S.D. Cal. 1945))

Section 785.19—MEAL.

(a) *Bona fide meal periods.* Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (Culkin v. Glenn L. Martin, Nebraska Co., 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 866 (1952) rehearing denied 344 U.S. 888 (1952); Thompson v. Stock & Sons, Inc., 93 F. Supp. 213 (E.D. Mich. 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); Biggs v. Joshua Hendy Corp., 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); Walling v. Dunbar Transfer and Storage Co., 3 W.H. Cases 284; 7 Labor Cases para 61,565 (W.D. Tenn. 1943); Lofton v. Seneca Coal and Coke Co., 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); Mitchell v. Tampa Cigar Co., 36 Labor Cases para. 65,198, 14 W.H. Cases 38 (S.D. Fla. 1959); Douglass v. Hurwitz Co., 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

(b) *Where no permission to leave premises.* It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

SLEEPING TIME AND CERTAIN OTHER ACTIVITIES

Section 785.20—GENERAL.

Under certain conditions an employee is considered to be working even though some of his time is spent in sleeping or in certain other activities.

Section 785.21—LESS THAN 24-HOUR DUTY.

An employee who is required to be on duty for less than 24 hours is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime. (Central Mo. Telephone Co. v. Conwell, 170 F. 2d 641 (C.A. 8, 1948); Strand v. Garden Valley Telephone Co., 51 F. Supp. 898 (D. Minn. 1943); Whitsitt v. Enid Ice & Fuel Co., 2 W.H. Cases 584; 6 Labor Cases para. 61,226 (W.D. Okla. 1942))

Section 785.22—DUTY OF 24 HOURS OR MORE.

(a) *General.* Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. (Armour v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift, 323 U.S. 134 (1944); General Electric Co. v. Porter, 208 F. 2d 805 (C.A. 9, 1953), cert. denied, 347 U.S. 951, 975 (1954); Bowers v. Remington Rand, 64 F. Supp. 620 (S.D. Ill. 1946), aff'd 159 F. 2d 114 (C.A. 7, 1946), cert. denied 330 U.S. 843 (1947); Bell v. Porter, 159 F. 2d 117 (C.A. 7, 1946), cert. denied 330 U.S. 813 (1947); Bridgeman v. Ford, Bacon & Davis, 161 F. 2d 962 (C.A. 8, 1947); Rokey v. Day & Zimmerman, 157 F. 2d 736 (C.A. 8, 1946); McLaughlin v. Todd & Brown, Inc., 7 W.H. Cases 1014; 15 Labor Cases para. 64,606 (N.D. Ind. 1948); Campbell v. Jones & Laughlin, 70 F. Supp. 996 (W.D. Pa. 1947))

(b) *Interruptions of sleep.* If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. For enforcement purposes, the Divisions have adopted the rule that if the employee cannot get at least 5 hours' sleep during the scheduled period the entire time is working time. (See Eustice v. Federal Cartridge Corp., 66 F. Supp. 55 (D. Minn. 1946))

Section 785.23—EMPLOYEES RESIDING ON EMPLOYER'S PREMISES OR WORKING AT HOME.

An employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is of course difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and also to a telephone operator who has the switchboard in her own home. (Skelly Oil Co. v. Jackson, 194 Okla. 183, 148 P. 2d 182 (Okla. Sup. Ct. 1944); Thompson v. Loring Oil Co., 50 F. Supp. 213 (W.D. La. 1943))

PREPARATORY AND CONCLUDING ACTIVITIES

Section 785.24—PRINCIPLES NOTED IN PORTAL-TO-PORTAL BULLETIN.

In November 1947, the Administrator issued the Portal-to-Portal Bulletin (Part 790 of this chapter). In dealing with this subject, § 790.8 (b) and (c) of this chapter said:

(b) The term "principal activities" includes all activities which are an integral part of a principal activity. Two examples of what is meant by an integral part of a principal activity are found in the report of the Judiciary Committee of the Senate on the Portal-to-Portal bill. They are the following:

(1) In connection with the operation of a lathe, an employee will frequently, at the commencement of his workday, oil, grease, or clean his machine, or install a new cutting tool. Such activities are an integral part of the principal activity, and are included within such term.

(2) In the case of a garment worker in a textile mill, who is required to report 30 minutes before other employees report to commence their principal activities, and who during such 30 minutes distributes clothing or parts of clothing at the workbenches of other employees and gets machines in readiness for operation by other employees, such activities are among the principal activities of such employee.

Such preparatory activities, which the Administrator has always regarded as work and as compensable under the Fair Labor Standards Act, remain so under the Portal Act, regardless of contrary custom or contract.

(c) Among the activities included as an integral part of the principal activity are those closely related activities which are indispensable to its performance. If an employee in a chemical plant, for example, cannot perform his principal activities without putting on certain clothes, changing clothes on the employer's premises at the beginning and end of the workday would be an integral part of the employee's principal activity. On the other hand, if changing clothes is merely a convenience to the employee and not directly related to his principal activities, it would be considered as a "preliminary" or "postliminary" activity rather than a principal part of the activity. However, activities such as checking in and out and waiting in line to do so would not ordinarily be regarded as integral parts of the principal activity or activities.

Section 785.25—ILLUSTRATIVE U.S. SUPREME COURT DECISIONS.

These principles have guided the Administrator in the enforcement of the act. Two cases decided by the U.S. Supreme Court further illustrate the types of activities which are considered an integral part of the employees' jobs. In one, employees changed their clothes and took showers in a battery plant where the manufacturing process involved the extensive use of caustic and toxic materials. (Steiner v. Mitchell, 350 U.S. 247 (1956)) In another case knifemen in a meatpacking plant sharpened their knives before and after their scheduled workday. (Mitchell v. King Packing Co., 350 U.S. 260 (1956)) In both cases the Supreme Court held that these activities are an integral and indispensable part of the employees' principal activities.

Section 785.26—SECTION 3(o) OF THE FAIR LABOR STANDARDS ACT.

Section 3(o) of the act provides an exception to the general rule for employees under collective bargaining agreements. This section provides for the exclusion from hours worked of time spent by an employee in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee. During any week in which such clothes-changing or washing time was not so excluded, it must be counted as hours worked if the changing of clothes or washing is indispensable to the performance of the employee's work or is required by law or by rules of the employer. The same would be true if the changing of clothes or washing was a preliminary or postliminary activity compensable by contract, custom, or practice as provided by section 4 of the Portal-to-Portal Act, and as discussed in § 785.9 and 29 CFR Part 790.

[30 F.R. 9912 Aug. 10, 1965]

LECTURES, MEETINGS AND TRAINING PROGRAMS

Section 785.27—GENERAL.

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

(a) Attendance is outside of the employee's regular working hours;

(b) attendance is in fact voluntary;

(c) the course, lecture, or meeting is not directly related to the employee's job; and

(d) the employee does not perform any productive work during such attendance.

Section 785.28—INVOLUNTARY ATTENDANCE.

Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.

Section 785.29—TRAINING DIRECTLY RELATED TO EMPLOYEE'S JOB.

The training is directly related to the employee's job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to a new or additional skill. For example, a stenographer who is given a course in stenography is engaged in an activity to make her a better stenographer. Time spent in such a course given by the employer or under his auspices is hours worked. However, if the stenographer takes a course in bookkeeping, it may not be directly related to her job. Thus, the time she spends voluntarily in taking such a bookkeeping course, outside of regular working hours, need not be counted as working time. Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficient in his present job, the training is not considered directly related to the employee's job even though the course incidentally improves his skill in doing his regular work.

[30 F.R. 9912 Aug. 10, 1965]

Section 785.30—INDEPENDENT TRAINING.

Of course, if an employee on his own initiative attends an independent school, college or independent trade school after hours, the time is not hours worked for his employer even if the courses are related to his job.

Section 785.31—SPECIAL SITUATIONS.

There are some special situations where the time spent in attending lectures, training sessions and courses of instruction is not regarded as hours worked. For example, an employer may establish for the benefit of his employees a program of instruction which corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance by an employee at such courses outside of working hours would not be hours worked even if they are directly related to his job, or paid for by the employer.

Section 785.32—APPRENTICESHIP TRAINING.

As an enforcement policy, time spent in an organized program of related, supplemental instruction by employees working under bona fide apprenticeship programs may be excluded from working time if the following criteria are met:

(a) The apprentice is employed under a written apprenticeship agreement or program which substantially meets the fundamental standards of the Bureau of Apprenticeship and Training of the U.S. Department of Labor; and

(b) Such time does not involve productive work or performance of the apprentice's regular duties. If the above criteria are met the time spent in such related supplemental training shall not be counted as hours worked unless the written agreement specifically provides that it is hours worked. The mere payment or agreement to pay for time spent in related instruction does not constitute an agreement that such time is hours worked.

TRAVEL TIME

Section 785.33—GENERAL.

The principles which apply in determining whether or not time spent in travel is working time depend upon the kind of travel involved. The subject is discussed in §§ 785.35 to 785.41, which are preceded by a brief discussion in § 785.34 of the Portal-to-Portal Act as it applies to travel time.

Section 785.34—EFFECT OF SECTION 4 OF THE PORTAL-TO-PORTAL ACT.

The Portal Act provides in section 4(a) that except as provided in subsection (b) no employer shall be liable for the failure to pay the minimum wage or overtime compensation for time spent in "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities." Subsection (b) provides that the employer shall not be relieved from liability if the activity is compensable by express contract or by custom or practice not inconsistent with an express contract. Thus travel time at the commencement or cessation of the workday which was originally considered as working time under the Fair Labor Standards Act (such as underground travel in mines or walking from timeclock to work-bench) need not be counted as working time unless it is compensable by contract, custom or practice. If compensable by express contract or by custom or practice not inconsistent with an express contract, such travel time must be counted in computing hours worked. However, ordinary travel from home to work (see § 785.35) need not be counted as hours worked even if the employer agrees to pay for it. (See Tennessee Coal, Iron & R.R. Co. v. Muscoda Local, 321 U.S. 590 (1946); Anderson v. Mt. Clemens Pottery Co., 328 U.S. 690 (1946); Walling v. Anaconda Copper Mining Co., 66 F. Supp. 913 (D. Mont. (1946).)

Section 785.35—HOME TO WORK; ORDINARY SITUATION.

An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not worktime.

Section 785.36—HOME TO WORK IN EMERGENCY SITUATIONS.

There may be instances when travel from home to work is worktime. For example, if an employee who has gone home after completing his day's work is subsequently called out at night to travel a substantial distance to perform an emergency job for one of his employer's customers, all time spent on such travel is working time. The Divisions are taking no position on whether travel to the job and back home by an employee who receives an emergency call outside of his regular hours to report back to his regular place of business to do a job is working time.

Section 785.37—HOME TO WORK ON SPECIAL ONE-DAY ASSIGNMENT IN ANOTHER CITY.

A problem arises when an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city. For example, an employee who works in Washington, D.C., with regular working hours from 9 a.m. to 5 p.m., may be given a special assignment in New York City, with instructions to leave Washington at 8 a.m. He arrives in New York at 12 noon, ready for work. The special assignment is completed at 3 p.m., and the employee arrives back in Washington at 7 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity which the employee was hired to perform on the workday in question; it is like travel involved in an emergency call (described in § 785.36), or like travel that is all in the day's work (see § 785.38). All the time involved, however, need not be counted. Since, except for the special assignment, the employee would have had to report to his regular work site, the travel between his home and the railroad depot may be deducted, it being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

Section 785.38—TRAVEL THAT IS ALL IN THE DAY'S WORK.

Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked. (Walling v. Mid-Continent Pipe Line Co., 143 F. 2d 308 (C.A. 10, 1944))

Section 785.39—TRAVEL AWAY FROM HOME COMMUNITY.

Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday the travel time during these hours is worktime on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. As an enforcement policy the Divisions will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Section 785.40—WHEN PRIVATE AUTOMOBILE IS USED IN TRAVEL AWAY FROM HOME COMMUNITY.

If an employee is offered public transportation but requests permission to drive his car instead, the employer may count as hours worked either the time spent driving the car or the time he would have had to count as hours worked during working hours if the employee had used the public conveyance.

Section 785.41—WORK PERFORMED WHILE TRAVELING.

Any work which an employee is required to perform while traveling must of course be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

ADJUSTING GRIEVANCES, MEDICAL ATTENTION, CIVIC AND CHARITABLE WORK, AND SUGGESTION SYSTEMS

Section 785.42—ADJUSTING GRIEVANCES.

Time spent in adjusting grievances between an employer and employees during the time the employees are required to be on the premises is hours worked, but in the event a bona fide union is involved the counting of such time will, as a matter of enforcement policy, be left to the process of collective bargaining or to the custom or practice under the collective bargaining agreement.

Section 785.43—MEDICAL ATTENTION.

Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked.

Section 785.44—CIVIC AND CHARITABLE WORK.

Time spent in work for public or charitable purposes at the employer's request, or under his direction or control, or while the employee is required to be on the premises, is working time. However, time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked.

Section 785.45—SUGGESTION SYSTEMS.

Generally, time spent by employees outside of their regular working hours in developing suggestions under a general suggestion system is not working time, but if employees are permitted to work on suggestions during regular working hours the time spent must be counted as hours worked. Where an employee is assigned to work on the development of a suggestion, the time is considered hours worked.

Subpart D—RECORDING WORKING TIME

Section 785.46—APPLICABLE REGULATIONS GOVERNING KEEPING OF RECORDS.

Section 11(c) of the act authorizes the Secretary to promulgate regulations requiring the keeping of records of hours worked, wages paid and other conditions of employment. These regulations are published in Part 516 of this chapter. Copies of the regulations may be obtained on request.

Section 785.47—WHERE RECORDS SHOW INSUBSTANTIAL OR INSIGNIFICANT PERIODS OF TIME.

In recording working time under the act, insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded. The courts have held that such trifles are de minimis. (Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).) This rule applies only where there are uncertain and indefinite periods of time involved of a few seconds or minutes duration, and where the failure to count such time is due to considerations justified by industrial realities. An employer may not arbitrarily fail to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable periods of time he is regularly required to spend on duties assigned to him. See Glenn L. Martin Nebraska Co. v. Culkin, 197 F. 2d 981, 987 (C.A. 8, 1952), cert. denied, 344 U.S. 866 (1952), rehearing denied, 344 U.S. 888 (1952), holding that working time amounting to $1 of additional compensation a week is "not a trivial matter to a workingman," and was not de minimis; Addison v. Huron Stevedoring Corp., 204 F. 2d 88, 95 (C.A. 2, 1953), cert. denied 346 U.S. 877, holding that "To disregard workweeks for which less than a dollar is due will produce capricious and unfair results." Hawkins v. E. I. du Pont de Nemours & Co., 12 W.H. Cases 448, 27 Labor Cases, para. 69, 094 (E.D. Va., 1955), holding that 10 minutes a day is not de minimis.

Section 785.48—USE OF TIME CLOCKS.

(a) *Differences between clock records and actual hours worked.* Time clocks are not required. In those cases where time clocks are used, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

(b) "*Rounding practices.* It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be accepted, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

Subpart E—MISCELLANEOUS PROVISIONS

Section 785.49—APPLICABLE PROVISIONS OF THE FAIR LABOR STANDARDS ACT.

(a) *Section 6.* Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) requires that each employee, not specifically exempted, who is engaged in commerce, or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce, or in the production of goods for commerce receive a specified minimum wage.

(b) *Section 7.* Section 7(a) of the Act (29 U.S.C. 207) provides that persons may not be employed for more than a stated number of hours a week without receiving at least one and one-half times their regular rate of pay for the overtime hours.

(c) *Section 3(g).* Section 3(g) of this act provides that: " 'Employ' includes to suffer or permit to work."

(d) *Section 3(o).* Section 3(o) of this act provides that: "Hours worked—in determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from the measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective bargaining agreement applicable to the particular employees."

[26 F.R. 190, Jan. 11, 1961, as amended at 26 F.R. 7732, Aug. 18, 61]

Section 785.50—SECTION 4 OF THE PORTAL-TO-PORTAL ACT.

Section 4 of this act provides that:

(a) Except as provided in paragraph (b), of this section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Davis-Bacon Act, on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after May 14, 1947:

(1) Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) Activities which are preliminary to or postliminary to said principal activity or activities, which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

(b) Notwithstanding the provisions of paragraph (a) of this section which relieve an employer from liability and punishment with respect to an activity the employer shall not be so relieved if such activity is compensable by either:

(1) An express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) A custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective bargaining representative and his employer.

(c) For the purposes of paragraph (b) of this section, an activity shall be considered as compensable, under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

(d) In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, of the Walsh-Healey Act, or of the Davis-Bacon Act, in determining the time for which an employer employs an employee with respect to walking, riding, traveling, or other preliminary or postliminary activities described in paragraph (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of paragraphs (b) and (c) of this section.

*U.S. Government Printing Office: 1992 — 312-411/64853

Appendix J: Fair Labor Standards Act; Records to be Kept by Employers; Final Rule

APPENDIX J

Fair Labor Standards Act
Records to be Kept
Final Rule

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

Federal Register July 1, 1987

federal register

Wednesday
July 1, 1987

Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Part 516

Fair Labor Standards Act; Records To Be Kept by Employers; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

Employment Standards Administration

29 CFR Part 516

Fair Labor Standards Act; Records to be Kept by Employers

[**Editorial Note:** This reprint incorporates corrections published in the **Federal Register** of Friday, July 10, 1987.]

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of revised recordkeeping regulations for employers subject to the Fair Labor Standards Act, including special recordkeeping rules that apply to employers whose employees fall within various minimum wage and/or overtime pay exemptions in the Act. This action conforms the regulations to statutory amendments which revised, repealed or added certain exemptions. In addition, various editorial changes have been made to simplify the language of the regulations.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Phone: (202) 523-8305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 15, 1986, the Department of Labor published in the **Federal Register** (51 FR 32744) proposed changes to 29 CFR Part 516. These regulations set forth the recordkeeping rules applicable to employers under the FLSA, including special recordkeeping requirements for employers whose employees fall within various statutory minimum wage and/or overtime pay exemptions. For the most part, the records that are required would be kept as a matter of customary or usual business practice.

Background

Section 11(c) of the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 *et seq.*), provides for the issuance of regulations governing the records employers must maintain and preserve to enable the Secretary of Labor to effectively enforce the FLSA's minimum wage and overtime provisions and the regulations issued thereunder.

Part 516 was last revised on February 20, 1975 (40 FR 7405) to add recordkeeping requirements for domestic service employees. In 1974 and 1977, the FLSA was amended by repealing, revising or adding certain minimum wage and/or overtime pay exemptions which necessitated special recordkeeping requirements under Part 516. For example, the exemptions from minimum wage compensation for motion picture theater employees, telegraph agency employees, small logging crews and employees employed in growing and harvesting shade grown tobacco were repealed by the 1974 Amendments. Such employees, however, continued to be exempt from the overtime pay requirements. The 1977 Amendments repealed the overtime pay exemption for employees employed in growing and harvesting shade grown tobacco and the partial overtime pay exemption for certain employees of hotels, motels and restaurants. Also, a new complete exemption from minimum wage and overtime pay requirements for casual baby sitters and those who provide companionship services for the aged or infirm was enacted in 1974. Thus it was necessary to amend Part 516 to take account of these amendments.

The regulatory changes to Part 516 also clarify the recordkeeping requirements for State and local government police and firefighters employed on a work period basis under the partial overtime exemption in section 7(k) of the Act. However, other special recordkeeping requirements unique to State and local governments in section 7(o) of the Act regarding the use of compensatory time added by the Fair Labor Standards Amendments of 1985 are contained in 29 CFR Part 553, Application of the Fair Labor Standards Act to Employees of State and Local Governments.

In addition, certain housekeeping changes have been made, such as simplification of language, elimination of gender specific terminology, deletion of repetitive references, etc., to streamline and update the recordkeeping requirements for all employers covered by the Act and particularly for those employers whose employees are subject to specific statutory exemptions.

Discussion of Comments

A total of eleven comments were received. Several of these commenters expressed general approval of the proposed regulations without suggesting any particular changes.

The American Nurses' Association, Inc., commented that where records are maintained on microfilm or automatic word or data processing memory, a provision for safeguarding against unauthorized alteration of previously entered data should be required. While the FLSA requires that employers maintain accurate records, the statute contains no specific requirement of special safeguards applicable to employers who automate their payroll systems. To impose such a requirement by regulation would, in the Department's view, place an unreasonable and unnecessary burden on those employers who use such systems. The association also argued that employees or their unions should be given an opportunity to challenge the veracity of any proposed changes to recorded data. The Department believes the FLSA contains sufficient safeguards to deter the falsification of records and to remedy such violations, and that employers should not be required under the Act to obtain employee approval of corrections. Accordingly, the suggested revisions have not been adopted. Finally, the association suggested that where the prior agreement or understanding required under section 7(j) of the FLSA is not in writing, copies of memoranda summarizing its terms should be furnished each employee. As provided in § 516.23 of the proposal, and the prior existing rule, employers are required to maintain a copy of the memorandum. While the Department intends that such memoranda should be available for inspection by employees, the suggested requirement to furnish a copy to each employee is an unwarranted burden on employers. For these reasons, this change has not been made in the final rule.

The New Jersey Department of Labor and the Kentucky Department for Employment Services argued that Part 516 should contain a statement that where other Federal or State regulations impose more restrictive requirements, the more restrictive rules are applicable. The Department agrees and has added a new paragraph (c) in § 516.1 for this purpose.

One commenter argued that the requirement in § 516.2(a)(5) to maintain a notation of the starting and ending points of the work periods for employees hired under section 7(k) presents a large volume of work in light of shift changes, particularly if such notations must be recorded in personnel files at a central location. Nothing in the regulations requires that records be maintained at a central location, although employers generally find it useful to do so for their own purposes. However, it is clear that the commenter incorrectly believed this requirement pertained to "shift schedules" (for example, "M—8:15 AM-4:45 PM; T—10:00 AM-6:00 PM; etc.) rather than "work periods" under section 7(k) (for example, "14-day work period beginning Sunday 12:01 AM and ending Saturday

12:00 midnight). No changes have been made to this section of the regulations.

The Montana Department of Labor and Industry argued that all employers should be required to maintain the basic records in § 516.2, even those employers exempt under the FLSA, in order to insure that the records are available for inspection under State laws. The Department believes Part 516 cannot be used as a vehicle to provide for the many variations of recordkeeping requirements under State laws. However, as noted above, a new paragraph (c) has been added to § 516.1 to address this issue.

The United Bus Owners of America commented that while they recognize that certain of the basic recordkeeping requirements (namely, § 516.2(a)(6) and (9)) do not apply to employees exempt from overtime pay under FLSA section 13(b)(1), the remaining basic requirements in § 516.2 should be reduced for such employees. No specific requirements were proposed for deletion. The Department has reviewed these requirements and believes they are necessary to insure records of compliance with the minimum wage and child labor provisions of the Act. Accordingly, no changes have been made in the final rule.

The West Virginia Legal Services Plan, Inc., commented that § 516.33(a) should be revised to delete the brief discussion, which was carried over from the prior existing rule, concerning the circumstances under which a joint employment relationship is established between farmers and farm labor contractors for purposes of including or excluding workers supplied by crew leaders in the 500 man-day test. They argued that the tests indicated in the proposal were too narrow and did not conform with certain court decisions on this matter. The Department agrees that Part 516 is not the proper vehicle to provide comprehensive guidance on this issue and has deleted the discussion of the conditions under which a joint employment relationship is established. Also, this commenter suggested that 516.33(c), concerning records for agricultural employers, include cross-references to the records retention requirements in §§ 516.5 and 516.6. The Department agrees and has incorporated such cross-references in the final rule.

The National Automobile Dealers Association (NADA) argued that the regulatory language in § 516.4 concerning the posting of notices would preclude their membership from modifying the posters to note that the overtime provisions do not apply to most of the employees pursuant to section 13(b)(10) of the FLSA. The changes to § 516.4 in the prior existing rule were intended to permit employers to modify the poster by including a notation concerning a particular overtime exemption that has broad application to the employees of the establishment. Further changes have been made in the final rule to clarify this matter.

The NADA also suggested that §§ 516.6 and 516.32 of the prior existing rule concerning equal pay recordkeeping requirements be restored in the final rule. However, as indicated in the proposal, the same regulatory language contained in the prior existing rule has been incorporated into regulations issued by the Equal Employment Opportunity Commission (EEOC) which has responsibility for enforcement and administration of the equal pay provisions of the FLSA. (See 29 CFR 1620.32 (b) and (c), formerly 29 CFR 1620.21 (b) and (c). In the Department's view, it is not appropriate to duplicate these requirements in Part 516. However, in order to clarify this matter, § 516.2 has been revised to include a cross reference to the EEOC rules.

Finally, the NADA questioned the reasons for certain deletions of requirements in the prior existing rule. Specifically, former § 516.6 contained a retention requirement for worktime schedules; former § 516.16 contained a recordkeeping requirement concerning the regular rate of pay of commission salespersons; and former § 516.10 contained a procedure for petitions to amend the recordkeeping regulations. All of these items were deleted in the proposal. The first two items were deleted as unnecessary to ensure compliance with the Act. The latter was deleted to eliminate the incorrect impression that special steps were necessary to seek a change in this particular regulation, and to avoid any possible confusion about the application of the Administrative Procedure Act. No further changes with respect to these items have been made in the final rule.

In addition to the changes discussed above, a number of minor editorial and punctuation changes have been made to the final regulatory text.

Classification—Executive Order 12291

The Department has conducted an analysis under the Paperwork Reduction Act of the estimated cost impact of these recordkeeping regulations on covered establishments. Based on that analysis, it is believed that this action is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. No comments were received on this determination.

Final Regulatory Flexibility Analysis

(1) Reasons Why Action by Agency is Being Considered

Part 516 contains the recordkeeping requirements applicable to all employers covered by the Fair Labor Standards Act (FLSA), including special requirements for employers whose employees are within the scope of various minimum wage and/or overtime pay exemptions to the Act. Since the last major revision of the regulations, the FLSA has been amended in 1974, 1977 and 1985. Further amendments in 1986 did not affect Part 516. These revisions are being issued to conform the recordkeeping regulations to the amended statute. Additional editorial changes are being made to simplify the rules.

(2) Objectives of and Legal Basis for Rule

The regulations are issued pursuant to section 11(c) of the FLSA which provides for the issuance of rules governing the types of records employers must maintain and preserve to enable the Secretary of Labor to effectively enforce the FLSA's provisions and any regulations issued thereunder. The objective of these revised rules is to provide employers with recordkeeping regulations which not only take into account the amended statute but which also simplify the regulatory requirements, to the extent possible, and the regulatory language in order to enable employers to more easily comply with the requirements of the Act.

(3) Number of Small Entities Covered Under Rule

These regulations apply to all employers (approximately 4.2 million) covered by the provisions of the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*). The majority of such employers would be classified as small entities. In addition, these regulations apply to approximately 83,000 State and local government agencies. It is estimated that 50,000 of thsee agencies would be classified as small entities.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The revised rules decrease the recordkeeping burdens for employers who previously had special recordkeeping requirements for employees subject to various exemptions in the FLSA. When a particular exemption is applicable, specific information, in addition to the basic recordkeeping requirements, is necessary to properly enforce the Act. Once an exemption has been repealed or revised, as occurred with the 1974 and 1977 Amendments, only certain basic information is necessary for enforcement. Therefore, changes have been made to the rules to conform the regulations to the amended statute. Also, changes have been made to simplify and clarify the language and to delete repetitiveness. As a result, the revised rules will provide employers with a better understanding of their recordkeeping obligation and will generally require employers to maintain information which they would normally keep as a matter of customary or usual business practice regardless of the size of the entity.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There is no duplication of existing Wage-Hour requirements. Certain similar information is required by the Internal Revenue Service (IRS) in 26 CFR Part 31. However, while the FLSA and IRS recordkeeping rules require similar information, the FLSA regulations do not require duplication of those records required by IRS.

(6) Differing Compliance or Reporting Requirements

As an alternative to the proposed approach, consideration was given to requiring a standard format for the collection of information. In that way, all records would be kept in the same form and order. This would arguably provide an easier method for enforcement, since all records would identically present the required information. However, it was determined that requiring a standard format for recordkeeping would be an unnecessary burden, particularly on small entities. Employers who are required to maintain and preserve records under the FLSA have varying capabilities and differing methods of recordkeeping which are most cost efficient and effective for their respective business organizations. By not requiring a standard format, employers can determine the method of recordkeeping which will have the smallest economic impact. This is of particular benefit to small entities which, in most cases, would be unable to expend the same resources as large entities for recordkeeping. Under these rules, small entities can maintain the required information in any order or form which they consider appropriate to their needs.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted above, the updated and streamlined rules will simplify compliance and reporting requirements for all employers covered by the Act, including small entities, by providing regulations that conform to the amended statute in language more easily understandable than the prior existing rule.

(8) Use of Other Standards

Appropriate alternative standards that would impose less burdensome regulations are not available.

(9) Exemptions of Small Entities From Coverage of the Rule

An exemption from recordkeeping for small entities covered by the FLSA is not possible since records are necessary for the enforcement of the Act regardless of the size of the entity. However, there are exemptions in the FLSA itself, reflected in the regulations, which take small entities into account. For example, section 13(a)(2) of the Act exempts from both minimum wage and overtime pay all employees of any retail or service establishment with an annual dollar volume of sales made or business done of less than $362,500 (exclusive of excise taxes at the retail level which are separately stated). This small business exemption is reflected in § 516.11 of the regulations where most of the basic recordkeeping requirements for such small entities have been waived. Thus, the regulations reflect a concern for the burden of recordkeeping on small entities.

As a result of the above analysis, it has been determined that the proposed rule will not have a significant detrimental economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the recordkeeping or reporting provisions that are included in these regulations have been approved by the Office of Management and Budget (OMB). OMB has assigned control numbers to the information collection requirements in this part: At the headings for Subpart A and Subpart B, OMB Control No. 1215–0017 for the recordkeeping requirements therein; at § 516.31, OMB Control No. 1215–0013 for the recordkeeping requirements of the homeworker handbook; and, OMB Control No. 1215–0006 for the reporting requirements of § 516.8.

Conclusion

The Department has determined in accordance with Executive Order 12291 that this regulation falls within the authority delegated to the Secretary of Labor by the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 *et seq.*). The Department has also determined that this regulation is consistent with the congressional intent of the application of the FLSA to covered employers. Finally, it has been determined that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention given to the comments.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 516

Minimum wage, Reporting and recordkeeping requirements.

For the reasons set forth above, 29 CFR Part 516 is revised as set forth below:

Signed at Washington, DC, on this 26th day of June, 1987.

William E. Brock,

Secretary of Labor.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

Introductory

Sec.
516.0 Display of OMB control Numbers.
516.1 Form of records; scope of regulations.

Subpart A—General Requirements

516.2 Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.
516.3 Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.

516.4 Posting of notices.
516.5 Records to be preserved 3 years.
516.6 Records to be preserved 2 years.
516.7 Place for keeping records and their availability for inspection.
516.8 Computations and reports.
516.9 Petitions for exceptions.
516.10 [Reserved]

Subpart B—Records Pertaining to Employees Subject to Miscellaneous Exemptions Under the Act; Other Special Requirements

516.11 Employees exempt from both minimum wage and overtime pay requirements under section 13(a) (2), (3), (4), (5), (8), (10), (12) or 13(d) of the Act.
516.12 Employees exempt from overtime pay requirements pursuant to section 13(b) (1), (2), (3), (9), (10), (15), (16), (17), (20), (21), (24), (27) or (28) of the Act.
516.13 Livestock auction employees exempt from overtime pay requirements under section 13(b)(13) of the Act.
516.14 Country elevator employees exempt from overtime pay requirements under section 13(b)(14) of the Act.
516.15 Local delivery employees exempt from overtime pay requirements pursuant to section 13(b)(11) of the Act.
516.16 Commission employees of a retail or service establishment exempt from overtime pay requirements pursuant to section 7(i) of the Act.
516.17 Seamen exempt from overtime pay requirements pursuant to section 13(b)(6) of the Act.
516.18 Employees employed in certain tobacco, cotton, sugar cane or sugar beet service, who are partially exempt from overtime pay requirements pursuant to section 7(m), 13(h), 13(i) or 13(j) of the Act.
516.19 [Reserved]
516.20 Employees under certain collective bargaining agreements who are partially exempt from overtime pay requirements as provided in section 7(b)(1) or section 7(b)(2) of the Act.
516.21 Bulk petroleum employees partially exempt from overtime pay requirements pursuant to section 7(b)(3) of the Act.
516.22 Employees engaged in charter activities of carriers pursuant to section 7(n) of the Act.
516.23 Employees of hospitals and residential care facilities compensated for overtime work on the basis of a 14-day work period pursuant to section 7(j) of the Act.
516.24 Employees employed under section 7(f) "Belo" contracts.
516.25 Employees paid for overtime on the basis of "applicable" rates provided in sections 7(g)(1) and 7(g)(2) of the Act.
516.26 Employees paid for overtime at premium rates computed on a "basic" rate authorized in accordance with section 7(g)(3) of the Act.
516.27 "Board, lodging, or other facilities" under section 3(m) of the Act.
516.28 Tipped employees.
516.29 Employees employed by a private entity operating an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System who are partially exempt from overtime pay requirements pursuant to section 13(b)(29) of the Act.
516.30 Learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Act.
516.31 Industrial homeworkers.
516.32 [Reserved]
516.33 Employees employed in agriculture under section 13(a)(6) or 13(b)(12) of the Act.

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211. Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.

Introductory

§ 516.0 Display of OMB control Numbers.

Subpart or section where information collection requirement is located	Currently assigned OMB control No.
Subpart A (except 516.6)	1215.0017
516.6	1215.0006
Subpart B (except 516.31)	1215.0017
516.31	1215.0013

§ 516.1 Form of records; scope of regulations.

(a) *Form of records.* No particular order or form of records is prescribed by the regulations in this part. However, every employer subject to any provisions of the Fair Labor Standards Act of 1938, as amended (hereinafter referred to as the "Act"), is required to maintain records containing the information and data required by the specific sections of this part. The records may be maintained and preserved on microfilm or other basic source document of an automatic word or data processing memory provided that adequate projection or viewing equipment is available, that the reproductions are clear and identifiable by date or pay period and that extensions or transcriptions of the information required by this part are made available upon request.

(b) *Scope of regulations.* The regulations in this part are divided into two subparts. (1) Subpart A of this part contains the requirements generally applicable to all employers employing covered employees, including the requirements relating to the posting of notices, the preservation and location of records, and the recordkeeping requirements for employers of employees to whom both the minimum wage provisions of section 6 or the minimum wage provisions of section 6 and the overtime pay provisions of section 7(a) of the Act apply. In addition, section 516.3 contains the requirements relating to executive, administrative, and professional employees (including academic administrative personnel or teachers in elementary or secondary schools), and outside sales employees.

(2) Subpart B of this part deals with the information and data which must be kept for employees (other than executive, administrative, etc., employees) who are subject to any of the exemptions provided in the Act. This section also specifies the records needed for deductions from and additions to wages for "board, lodging, or other facilities," industrial homeworkers and employees whose tips are credited toward wages. The sections in Subpart B of this part require the recording of more, less, or different items of information or data than required under the generally applicable recordkeeping requirements of Subpart A.

(c) *Relationship to other recordkeeping and reporting requirements.* Nothing in 29 CFR Part 516 shall excuse any party from complying with any recordkeeping or reporting requirement imposed by any other Federal, State or local law, ordinance, regulation or rule.

Subpart A—General Requirements

§ 516.2 Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.

(a) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

(1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records.

(2) Home address, including zip code.

(3) Date of birth, if under 19.

(4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.) (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR Part 1620.)

(5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice.

(6)(i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act, (ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and (iii) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data).

(7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays).

(8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation.

(9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under item (8) above.

(10) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions.

(11) Total wages paid each pay period.

(12) Date of payment and the pay period covered by payment.

(b) *Records of retroactive payment of wages.* Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act, shall:

(1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) *Employees working on fixed schedules.* With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also,

(1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by him, and

(2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

§ 516.3 Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.

With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in Part 541 of this chapter (pertaining to so-called "white collar" employee exemptions), employers shall maintain and preserve records containing all the information and data required by § 516.2(a) except paragraphs (a) (6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites. (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as "plus hospitalization and insurance plan A," "benefit package B," "2 weeks paid vacation," etc.)

§ 516.4 Posting of notices.

Every employer employing any employees subject to the Act's minimum wage provisions shall post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy. Any employer of employees to whom section 7 of the Act does not apply because of an exempt of broad application to an establishment may alter or modify the poster with a legible notation to show that the overtime provisions do not apply. For example: "Overtime Provisions Not Applicable to Taxicab Drivers (Sec. 13(b)(17))".

§ 516.5 Records to be preserved 3 years.

Each employer shall preserve for at least 3 years:

(a) *Payroll records.* From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part, and

(b) *Certificates, agreements, plans, notices, etc.* From their last effective date, all written:

(1) Collective bargaining agreements relied upon for the exclusion of certain costs under section 3(m) of the Act,

(2) Collective bargaining agreements, under section 7(b)(1) or 7(b)(2) of the Act, and any amendments or additions thereto,

(3) Plans, trusts, employment contracts, and collective bargaining agreements under section 7(e) of the Act,

(4) Individual contracts or collective bargaining agreements under section 7(f) of the Act. Where such contracts or agreements are not in writing, a written memorandum summarizing the terms of each such contract or agreement,

(5) Written agreements or memoranda summarizing the terms of oral agreements or understandings under section 7(g) or 7(j) of the Act, and

(6) Certificates and notices listed or named in any applicable section of this part.

(c) *Sales and purchase records.* A record of (1) total dollar volume of sales or business, and (2) total volume of goods purchased or received during such periods (weekly, monthly, quarterly, etc.), in such form as the employer maintains records in the ordinary course of business.

§ 516.6 Records to be preserved 2 years.

(a) Supplementary basic records: Each employer required to maintain records under this part shall preserve for a period of at least 2 years.

(1) *Basic employment and earnings records.* From the date of last entry, all basic time and earning cards or sheets on which are entered the daily startin and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those

amounts determine in whole or in part the pay period earnings or wages of those employees.

(2) *Wage rate tables.* From their last effective date, all tables or schedules of the employer which provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation.

(b) Order, shipping, and billing records: From the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations.

(c) Records of additions to or deductions from wages paid:

(1) Those records relating to individual employees referred to in § 516.2(a)(10) and

(2) All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.

§ 516.7 Place for keeping records and their availability for inspection.

(a) *Place of records.* Each employer shall keep the records required by this part safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Administrator or a duly authorized and designated representative.

(b) *Inspection of records.* All records shall be available for inspection and transcription by the Administrator or a duly authorized and designated representative.

§ 516.8 Computations and reports.

Each employer required to maintain records under this part shall make such extension, recomputation, or transcription of the records and shall submit to the Wage and Hour Division such reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the Administrator or a duly authorized and designated representative may request in writing.

§ 516.9 Petitions for exceptions.

(a) *Submission of petitions for relief.* Any employer or group of employers who, due to peculiar conditions under which they must operate, desire authority to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period specified in this part, may submit a written petition to the Administrator requesting such authority, setting forth the reasons therefor.

(b) *Action on petitions.* If, after review of the petition, the Administrator finds that the authority requested will not hinder enforcement of the Act, the Administrator may grant such authority limited by any conditions determined necessary and subject to subsequent revocation. Prior to revocation of such authority because of noncompliance with any of the prescribed conditions, the employer will be notified of the reasons and given an opportunity to come into compliance.

(c) *Compliance after submission of petitions.* The submission of a petition or the delay of the Administrator in acting upon such petition will not relieve any employer or group of employers from any obligations to comply with all the applicable requirements of the regulations in this part. However, the Administrator will provide a response to all petitions as soon as possible.

§ 516.10 [Reserved]

Subpart B—Records Pertaining to Employees Subject to Miscellaneous Exemptions Under the Act; Other Special Requirements

§ 516.11 Employees exempt from both minimum wage and overtime pay requirements under section 13(a) (2), (3), (4), (5), (8), (10), (12), or 13(d) of the Act.

With respect to each and every employee exempt from both the minimum wage and overtime pay requirements of the Act pursuant to the provisions of section 13(a) (2), (3), (4), (5), (8), (10), (12), or 13(d) of the Act, employers shall maintain and preserve records containing the information and data required by § 516.2(a) (1) through (4).

§ 516.12 Employees exempt from overtime pay requirements pursuant to section 13(b) (1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to the provisions of section 13(b) (1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28) of the Act, shall maintain and preserve payroll or other records, containing all the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, information and data regarding the basis on which wages are paid (such as the monetary amount paid, expressed as earnings per hour, per day, per week, etc.).

§ 516.13 Livestock auction employees exempt from overtime pay requirements under section 13(b)(13) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(13), the employer shall maintain and preserve records containing the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, for each workweek in which the employee is employed both in agriculture and in connection with livestock auction operations: (a) the total number of hours worked by each such employee, (b) the total number of hours in which the employee was employed in agriculture and the total number of hours employed in connection with livestock auction operations, and (c) the total straight-time earnings for employment in livestock auction operations.

§ 516.14 Country elevator employees exempt from overtime pay requirements under section 13(b)(14) of the Act.

(a) With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(14), the employer shall maintain and preserve records containing the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, for each workweek, the names and occupations of all persons employed in the country elevator, whether or not covered by the Act, and

(b) Information demonstrating that the "area of production" requirements of Part 536 of this chapter are met.

§ 516.15 Local delivery employees exempt from overtime pay requirements pursuant to section 13(b)(11) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(11), the employer shall maintain and preserve payroll or other records, containing all the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, information and data regarding the basis on which wages are paid (such as the dollar amount paid per trip; the dollar amount of earnings per week plus 3 percent commission on all cases delivered). Records shall also contain the following information:

(a) A copy of the Administrator's finding under Part 551 of this chapter with respect to the plan under which such employees are compensated;

(b) A statement or description of any changes made in the trip rate or other delivery payment plan of compensation for such employees since its submission for such finding;

(c) Identification of each employee employed pursuant to such plan and the work assignments and duties; and

(d) A computation for each quarter-year of the average weekly hours of full-time employees employed under the plan during the most recent representative annual period as described in § 551.8(g) (1) and (2) of this chapter.

§ 516.16 Commission employees of a retail or service establishment exempt from overtime pay requirements pursuant to section 7(i) of the Act.

With respect to each employee of a retail or service establishment exempt from the overtime pay requirements of the Act pursuant to the provisions of section 7(i), employers shall maintain and preserve payroll and other records containing all the information and data required by § 516.2(a) except paragraphs (a) (6), (8), (9), and (11), and in addition:

(a) A symbol, letter or other notation placed on the payroll records identifying each employee who is paid pursuant to section 7(i).

(b) A copy of the agreement or understanding under which section 7(i) is utilized or, if such agreement or understanding is not in writing, a memorandum summarizing its terms including the basis of compensation, the applicable representative period and the date the agreement was entered into and how long it remains in effect. Such agreements or understandings, or summaries may be individually or collectively drawn up.

(c) Total compensation paid to each employee each pay period (showing separately the amount of commissions and the amount of noncommission straight-time earnings).

§ 516.17 Seamen exempt from overtime pay requirements pursuant to section 13(b)(6) of the Act.

With respect to each employee employed as a seaman and exempt from the overtime pay requirements of the Act pursuant to section 13(b)(6), the employer shall maintain and preserve payroll or other records, containing all the information required by § 516.2(a) except paragraphs (a) (5) through (9) and, in addition, the following:

(a) Basis on which wages are paid (such as the dollar amount paid per hour, per day, per month, etc.)

(b) Hours worked each workday and total hours worked each pay period (for purposes of this section, a "workday" shall be any fixed period of 24 consecutive hours; the "pay period" shall be the period covered by the wage payment, as provided in section 6(a)(4) of the Act),

(c) Total straight-time earnings or wages for each such pay period, and

(d) The name, type, and documentation, registry number, or other identification of the vessel or vessels upon which employed.

§ 516.18 Employees employed in certain tobacco, cotton, sugar cane or sugar beet services who are partially exempt from overtime pay requirements pursuant to section 7(m), 13(h), 13(i) or 13(j) of the Act.

With respect to each employee providing services in connection with certain types of green leaf or cigar leaf tobacco, cotton, cottonseed, cotton ginning, sugar cane, sugar processing or sugar beets who are partially exempt from the overtime pay requirements of the Act pursuant to 7(m), 13(h), 13(i) or 13(j), the employer shall, in addition to the records required in § 516.2, maintain and preserve a record of the daily and weekly overtime compensation paid. Also, the employer shall note in the payroll records the beginning date of each workweek during which the establishment operates under the particular exemption.

§ 516.19 [Reserved]

§ 516.20 Employees under certain collective bargaining agreements who are partially exempt from overtime pay requirements as provided in section 7(b)(1) or section 7(b)(2) of the Act.

(a) The employer shall maintain and preserve all the information and data required by § 516.2 and shall record daily as well as weekly overtime compensation for each employee employed:

(1) Pursuant to an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employees shall be employed more than 1,040 hours during any period of 26 consecutive weeks as provided in section 7(b)(1) of the Act, or

(2) Pursuant to an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall be employed not more than 2,240 hours during a specified period of 52 consecutive weeks and shall be guranteed employment as provided in section 7(b)(2) of the Act.

(b) The employer shall also keep copies of such collective bargaining agreement and such National Labor Relations Board certification as part of the records and shall keep a copy of each amendment or addition thereto.

(c) The employer shall also make and preserve a record, either separately or as a part of the payroll:

(1) Listing each employee employed pursuant to each such collective bargaining agreement and each amendment and addition thereto.

(2) Indicating the period or periods during which the employee has been or is employed pursuant to an agreement under section 7(b)(1) or 7(b)(2) of the Act, and

(3) Showing the total hours worked during any period of 26 consecutive weeks, if the employee is employed in accordance with section 7(b)(1) of the Act, or during the specified period of 52 consecutive weeks, if employed in accordance with section 7(b)(2) of the Act.

§ 516.21 Bulk petroleum employees partially exempt from overtime pay requirements pursuant to section 7(b)(3) [illegible] the Act.

With respect to each employee partially exempt from the overtime provisions of the Act pursuant to section 7(b)(3), the employer shall maintain and preserve records containing all the information and data required by § 516.2(a), and, in addition, shall record the daily as well as the weekly overtime compensation paid to the employees, the rate per hour and the total pay for time worked between the 40th and 56th hour of the workweek.

§ 516.22 Employees engaged in charter activities of carriers pursuant to section 7(n) of the Act.

With respect to each employee employed in charter activities for a street, suburban or interurban electric railway or local trolley or motorbus carrier pursuant to section 7(n) of the Act, the employer shall maintain and preserve records containing all the information and data required by § 516.2(a) and, in addition, the following:

(a) Hours worked each workweek in charter activities; and

(b) A copy of the employment agreement or understanding stating [illegible] in determining the hours of employm[illegible] for overtime pay purposes, the hours spent by the employee in charter activities will be excluded and, also, the date this agreement or understanding was entered into.

§ 516.23 Employees of hospitals and residential care facilities compensated for overtime work on the basis of a 14-day work period pursuant to section 7(j) of the Act.

With respect to each employee of hospitals and institutions primarily engaged in the care of the sick, the aged, or mentally ill or defective who reside on the premises compensated for overtime work on the basis of a work period of 14 consecutive days pursuant to an agreement or understanding under section 7(j) of the Act, employers shall maintain and preserve.

(a) The records required by § 516.2 except paragraphs (a) (5) and (7) through (9), and in addition:

(1) Time of day and day of week on which the employee's 14-day work period begins,

(2) Hours worked each workday and total hours worked each 14-day work period,

(3) Total straight-time wages paid for hours worked during the 14-day period,

(4) Total overtime excess compensation paid for hours worked in excess of 8 in a workday and 80 in the work period.

(b) A copy of the agreement or understanding with respect to using the 14-day period for overtime pay computations or, if such agreement or understanding is not in writing, a memorandum summarizing its terms and showing the date it was entered into and how long it remains in effect.

§ 516.24 Employees employed under section 7(f) "Belo" contracts.

With respect to each employee to whom both sections 6 and 7(f) of the Act apply, the employer shall maintain and preserve payroll or other records containing all the information and data required by § 516.2(a) except paragraphs (a) (8) and (9), and, in addition, the following:

(a) Total weekly guaranteed earnings,

(b) Total weekly compensation in excess of weekly guaranty,

(c) A copy of the bona fide individual contract or the agreement made as a result of collective bargaining by representatives of employees, or where such contract or agreement is not in writing, a written memorandum summarizing its terms.

§ 516.25 Employees paid for overtime on the basis of "applicable" rates provided in sections 7(g)(1) and 7(g)(2) of the Act.

With respect to each employee compensated for overtime work in accordance with section 7(g)(1) or 7(f)(2) of the Act, employers shall maintain and preserve records containing all the information and data required by § 516.2(a) except paragraphs (a)(6) and (9) and, in addition, the following:

(a)(1) Each hourly or piece rate at which the employee is employed, (2) basis on which wages are paid, and (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate,"

(b) The number of overtime hours worked in the workweek at each applicable hourly rate or the number of units of work performed in the workweek at each applicable piece rate during the overtime hours,

(c) Total weekly overtime compensation at each applicable rate which is over and above all straight-time earnings or wages earned during overtime worked,

(d) The date of the agreement or understanding to use this method of compensation and the period covered. If the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to use this method of compensation a single notation of the date of the agreement or understanding and the period covered will suffice.

§ 516.26 Employees paid for overtime at premium rates computed on a "basic" rate authorized in accordance with section 7(g)(3) of the Act.

With respect to each employee compensated for overtime hours at a "basic" rate which is substantially equivalent to the employee's average hourly earnings, as authorized in accordance with section 7(g)(3) of the Act and Part 548 of this chapter, employers shall maintain and preserve records containing all the information and data required by § 516.2 except paragraph (a)(6) thereof and, in addition, the following:

(a)(1) The hourly rates, piece rates, or commission rates applicable to each type of work performed by the employee, (2) the computation establishing the basic rate at which the employee is compensated for overtime hours (if the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to accept this method of compensation, a single entry of this computation will suffice), (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate."

(b)(1) Identity of representative period for computing the basic rate, (2) the period during which the established basic rate is to be used for computing overtime compensation, (3) information which establishes that there is no significant difference between the pertinent terms, conditions and circumstances of employment in the period selected for the computation of the basic rate and those in the period for which the basic rate is used for computing overtime compensation, which could affect the representative character of the period from which the basic rate is derived.

(c) A copy of the written agreement or, if there is no such agreement, a memorandum summarizing the terms of and showing the date and period covered by the oral agreement or understanding to use this method of computation. If the employee is one of a group, all of whom have agreed to use this method of computation, a single memorandum will suffice.

§ 516.27 "Board, lodging, or other facilities" under section 3(m) of the Act.

(a) In addition to keeping other records required by this part, an employer who makes deductions from the wages of employees for "board, lodging, or other facilities" (as these terms are used in sec. 3(m) of the Act) furnished to them by the employer or by an affiliated person, or who furnishes such "board, lodging, or other facilities" to employees as an addition to wages, shall maintain and preserve records substantiating the cost of furnishing each class of facility except as noted in paragraph (c) of this section. Separate records of the cost of each item furnished to an employee need not be kept. The requirements may be met by keeping combined records of the costs incurred in furnishing each class of facility, such as housing, fuel, or merchandise furnished through a company store or commissary. Thus, in the case of an employer who furnishes housing, separate cost records need not be kept for each house. The cost of maintenance, utilities, and repairs for all the houses may be shown together. Original cost and depreciation records may be kept for groups of houses acquired at the same time. Costs incurred in furnishing similar or closely related facilities, moreover, may be shown in combined records. Where cost records are kept for a "class" of facility rather than for each individual article furnished to employees, the records must also show the gross income derived from each such class of facility; e.g., gross rentals in the case of houses, total sales through the store or commissary, total receipts from sales of fuel, etc.

(1) Such records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the reasonable cost, as defined in Part 531 of this

chapter, and shall contain the data required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the facilities, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets. If the assets include merchandise held for sale to employees, the records should contain data from which the average net investment in inventory can be determined.

(2) No particular degree of itemization is prescribed. However, the amount of detail shown in these accounts should be consistent with good accounting practices, and should be sufficient to enable the Administrator or authorized representative to verify the nature of the expenditure and the amount by reference to the basic records which must be preserved pursuant to § 516.6(c)(2).

(b) If additions to or deductions from wages paid (1) so affect the total cash wages due in any workweek (even though the employee actually is paid on other than a workweek basis) as to result in the employee receiving less in cash than the applicable minimum hourly wage, or (2) if the employee works in excess of the applicable maximum hours standard and (i) any additions to the wages paid are a part of wages, or (ii) any deductions made are claimed as allowable deductions under sec. 3(m) of the Act, the employer shall maintain records showing on a workweek basis those additions to or deductions from wages. (For legal deductions not claimed under sec. 3(m) and which need not be maintained on a workweek basis, see Part 531 of this chapter.)

(c) The records specified in this § 516.27 are not required with respect to an employee in any workweek in which the employee is not subject to the overtime provisions of the Act and receives not less than the applicable statutory minimum wage in cash for all hours worked in that workweek. (The application of section 3(m) of the Act in nonovertime weeks is discussed in Part 531 of this chapter.)

§ 516.28 Tipped employees.

(a) With respect to each tipped employee whose wages are determined pursuant to section 3(m) of the Act, the employer shall maintain and preserve payroll or other records containing all the information and data required in § 516.2(a) and, in addition, the following:

(1) A symbol, letter or other notation placed on the pay records identifying each employee whose wage is determined in part by tips.

(2) Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070).

(3) Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of 40 percent of the applicable statutory minimum wage). The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.

(4) Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours.

(5) Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.

§ 516.29 Employees employed by a private entity operating an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System who are partially exempt from overtime pay requirements pursuant to section 13(b)(29) of the Act.

With respect to each employee who is partially exempt from the overtime pay requirements of the Act pursuant to section 13(b)(29), the employer shall maintain and preserve the records required in § 516.2, except that the record of the regular hourly rate of pay in § 516.2(a)(6) shall be required only in a workweek when overtime compensation is due under section 13(b)(29).

§ 516.30 Learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Act.

(a) With respect to persons employed as learners, apprentices, messengers or full-time students employed outside of their school hours in any retail or service establishment in agriculture, or in institutions of higher education, or handicapped workers employed at special minimum hourly rates under Special Certificates pursuant to section 14 of the Act, employers shall maintain and preserve records containing the same information and data required with respect to other employees employed in the same occupations.

(b) In addition, each employer shall segregate on the payroll or pay records the names and required information [illegible] data with respect to those learners, apprentices, messengers, handicapped workers and students, employed under Special Certificates. A symbol or letter may be placed before each such name on the payroll or pay records indicating that that person is a "learner," "apprentice," "messenger," "student," or "handicapped worker," employed under a Special Certificate.

§ 516.31 Industrial homeworkers.

(a) *Definitions.* (1) "Industrial homeworker" and "homeworker," as used in this section, mean any employee employed or suffered or permitted to perform industrial homework for an employer.

(2) "Industrial homework," as used in this section, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.

(3) The meaning of the terms "person," "employ," "employer," "employee," "goods," and "producti[illegible] as used in this section is the same a[illegible] the Act.

(b) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every industrial homeworker employed (excepting those homeworkers to whom section 13(d) of the Act applies and those homeworkers in Puerto Rico to whom Part 545 of this chapter applies, or in the Virgin Islands to whom Part 695 of this chapter applies):

(1) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same as that used for Social Security purposes.

(2) House address, including zip code.

(3) Date of birth if under 19.

(4) With respect to each lot of work:

(i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun.

(ii) Date on which work is turned in by worker, and amount of such wor[illegible]

(iii) Kind of articles worked on a[illegible] operations performed.

(iv) Piece rates paid.

(v) Hours worked on each lot of work turned in.

(vi) Wages paid for each lot of work turned in.

(vii) Deductions for Social Security taxes,

(viii) Date of wage payment and pay eriod covered by payment,

(5) With respect to each week:

(i) Hours worked each week,

(ii) Wages earned for each week at regular piece rates,

(iii) Extra pay due each week for overtime worked,

(iv) Total wages earned each week,

(v) Deductions for Social Security taxes,

(6) With respect to any agent, distributor, or contractor: The name and address of each such agent, distributor, or contractor through whom homework is distributed or collected and name and address of each homeworker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

(7) Record of retroactive payment of wages. Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator pursuant to section 16(c) of the Act, shall:

(i) Record and preserve, as an entry on the payroll or other pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(ii) Prepare a report of each such yment on the receipt form provided or uthorized by the Wage and Hour Division, and *(a)* preserve a copy as part of the employer's records, *(b)* deliver a copy to the employee, and *(c)* file the original, which shall evidence payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) Homework handbook. In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by the employer to each worker) shall be kept for each homeworker. The information required therein shall be entered by the employer or the person distributing or collecting homework on behalf of such employer each time work is given out to or received from a homeworker. Except for the time necessary for the making of entries by the employer, the handbook must remain in the possession of the homeworker until such time as the Wage and Hour Division may request it. Upon completion of the handbook (that is, no space remains for additional ntries) or termination of the meworker's services, the handbook hall be returned to the employer for preservation in accordance with the regulations in this part. A separate record and a separate handbook shall be kept for each person performing homework.

(d) *Preservation of industrial homework certificates.* Certificates issued to permit homework in the restricted industries (as set forth in Part 530 of this chapter) shall be preserved in accordance with the regulations § 530.8 and in § 516.5(b).

§ 516.32 [Reserved]

§ 516.33 Employees employed in agriculture pursuant to section 13(a)(6) or 13(b)(12) of the Act.

(a) No records, except as required under paragraph (f) of this section, need be maintained by an employer who did not use more than 500 man-days [1] of agricultural labor in any quarter of the preceding calendar year, unless it can reasonably be anticipated that more than 500 man-days of agricultural labor will be used in at least one calendar quarter of the current calendar year. The 500 man-day test includes the work of agricultural workers supplied by crew leaders, or farm labor contractors, if the farmer is an employer of such workers, or a joint employer of such workers with the crew leader or farm labor contractor. However, members of the employer's immediate family are not included. (A "man-day" is any day during which an employee does agricultural work for 1 hour or more.)

(b) If it can reasonably be anticipated that the employer will use more than 500 man-days of agricultural labor in at least one calendar quarter of the current calendar year, the employer shall maintain and preserve for each employee records containing all the information and data required by § 516.2(a) (1), (2) and (4) and, in addition, the following:

(1) Symbols or other identifications separately designating those employees who are (i) members of the employer's immediate family as defined in section 13(a)(6)(B) of the Act, (ii) hand harvest laborers as defined in section 13(a)(6) (C) or (D), and (iii) employees principally engaged in the range production of livestock as defined in section 13(a)(6)(E).

(2) For each employee, other than members of the employer's immediate family, the number of man-days worked each week or each month.

(c) For the entire year following a year in which the employer used more than 500 man-days of agricultural labor in any calendar quarter, the employer shall maintain, and preserve in accordance with §§ 516.5 and 516.6, for each covered employee (other than members of the employer's immediate family, hand harvest laborers and livestock range employees as defined in sections 13(a)(6) (B), (C), (D), and (E) of the Act) records containing all the information and data required by § 516.2(a) except paragraphs (a) (3) and (8).

(d) In addition to other required items, the employer shall keep on file with respect to each hand harvest laborer as defined in section 13(a)(6)(C) of the Act for whom exemption is taken, a statement from each such employee showing the number of weeks employed in agriculture during the preceding calendar year.

(e) With respect to hand harvest laborers as defined in section 13(a)(6)(D), for whom exemption is taken, the employer shall maintain in addition to paragraph (b) of this section, the minor's date of birth and name of the minor's parent or person standing in place of the parent.

(f) Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 18 years of age on days when school is in session or on any day if the minor is employed in an occupation found to be hazardous by the Secretary shall maintain and preserve records containing the following data with respect to each and every such minor so employed:

(1) Name in full,

(2) Place where minor lives while employed. If the minor's permanent address is elsewhere, give both addresses,

(3) Date of birth.

(g) Where a farmer and a bona fide independent contractor or crew leader are joint employers of agricultural laborers, each employer is responsible for maintaining and preserving the records required by this section. Duplicate records of hours and earnings are not required. The requirements will be considered met if the employer who actually pays the employees maintains and preserves the records specified in paragraphs (c) and (f) of this section.

[FR Doc. 87–14936 Filed 6–30–87; 8:45 am]

[Editorial Note: This reprint incorporates corrections published in the **Federal Register** of Friday, July 10, 1987.]

BILLING CODE 4510–27–M

---

[1] Sections 3(u) and 13(a)(6) of the Fair Labor Standards Act (29 U.S.C. 201 et seq.) set forth and define the term "man-day."

☆U.S. Government Printing Office : 1989 - 262-288/06714

Appendix K: Employment Relationship Under the Fair Labor Standards Act

APPENDIX K

Employment Relationship Under the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1297

Employment Relationship Under the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1297
(Revised May 1980)
(Reprinted August 1985)

This publication is for general information and is not to be considered in the same light as statements of position contained in Interpretative Bulletins published in the Federal Register and the Code of Federal Regulations, or in the official opinion letters of the Wage and Hour Administrator.

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

EMPLOYMENT RELATIONSHIP UNDER THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act contains provisions and standards concerning recordkeeping, minimum wages, overtime pay and child labor. These basic requirements apply to employees engaged in interstate commerce or in the production of goods for interstate commerce and also to employees in certain enterprises which are so engaged. Federal employees are also subject to the recordkeeping, minimum wage, overtime, and child labor provisions of the Act. Employees of State and local government are subject to the same provisions, unless they are engaged in traditional governmental activities, in which case they are subject to the recordkeeping and child labor requirements. The law provides some specific exemptions from its requirements as to employees employed by certain establishments and in certain occupations.

The Act is administered by the U.S. Department of Labor's Wage and Hour Division with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission and the Tennessee Valley Authority. The Office of Personnel Management is responsible for administering the Act with regard to all other Federal employees.

For the Fair Labor Standards Act to apply to a person engaged in work which is covered by the Act, an employer-employee relationship must exist. The purpose of this publication is to discuss in general terms the latter requirement.

If you have specific questions about the statutory requirements, contact the W-H Division's nearest office. Give detailed information bearing on your problem since coverage and exemptions depend upon the facts in each case.

STATUTORY DEFINITIONS

Employment relationship requires an "employer" and an "employee" and the act or condition of employment. The Act defines the terms "employer", "employee", and "employ" as follows:

"Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization. - Section 3(d).

(1) Except as provided in paragraphs (2) and (3), the term "employee" means any individual employed by an employer.
(2) In the case of an individual employed by a public agency such term means--
- (A) any individual employed by the Government of the United States--
  - (i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),
  - (ii) in any executive agency (as defined in section 105 of such title),
  - (iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,
  - (iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or
  - (v) in the Library of Congress;
- (B) any individual employed by the United States Postal Service or the Postal Rate Commission; and
- (C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual--
  - (i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and
  - (ii) who--
    - (I) holds a public elective office of that State, political subdivision, or agency,
    - (II) is selected by the holder of such an office to be a member of his personal staff,
    - (III) is appointed by such an officeholder to serve on a policymaking level, or
    - (IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.*

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

* See note on top on next page

*On June 24, 1976, the Supreme Court, in the case of National League of Cities v. Usery, ruled that it was unconstitutional to apply the minimum wage and overtime provisions of the Fair Labor Standards Act to State and local government employees engaged in activities which are an integral part of traditional government services. The Court expressly found that school, hospital, fire prevention, police protection, sanitation, public health, and parks and recreation activities are among those to which the minimum wage and overtime provisions do not apply. However, it is the Department's position that the decision effects no change in the application of the child labor or recordkeeping provisions.

"Employ" includes to suffer or permit to work. - Section 3(g).

EMPLOYMENT RELATION DISTINGUISHED FROM COMMON LAW CONCEPT

The courts have made it clear that the employment relationship under the Act is broader than the traditional common law concept of master and servant. The difference between the employment relationship under the Act and that under the common law arises from the fact that the term "employ" as defined in the Act includes "to suffer or permit to work". The courts have indicated that, while "to permit" requires a more positive action than "to suffer", both terms imply much less positive action than required by the common law. Mere knowledge by an employer of work done for him by another is sufficient to create the employment relationship under the Act.

TEST OF THE EMPLOYMENT RELATION

The Supreme Court has said that there is "no definition that solves all problems as to the limitations of the employer-employee relationship" under the Act; it has also said that determination of the relation cannot be based on "isolated factors" or upon a single characteristic or "technical concepts", but depends "upon the circumstances of the whole activity" including the underlying "economic reality". In general an employee, as distinguished from an independent contractor who is engaged in a business of his own, is one who "follows the usual path of an employee" and is dependent on the business which he serves. The factors which the Supreme Court has considered significant, although no single one is regarded as controlling, are:

> (1) the extent to which the services in question are an integral part of the employer's business;
>
> (2) the permanency of the relationship;
>
> (3) the amount of the alleged contractor's investment in facilities and equipment;
>
> (4) the nature and degree of control by the principal;
>
> (5) the alleged contractor's opportunities for profit and loss; and
>
> (6) the amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

TRAINEES

The Supreme Court has held that the words "to suffer or permit to work", as used in the Act to define "employ", do not make all persons employees who, without any express or implied compensation agreement, may work for their own advantage on the premises of another. Whether trainees or students are employees of an employer under the Act will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the meaning of the Act:

> (1) the training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
>
> (2) the training is for the benefit of the trainees or students;

389

(3) the trainees or students do not displace regular employees, but work under their close observation;

(4) the employer that provides the training derives no immediate advantage from the activities of the trainees or students; and on occasion his operations may actually be impeded;

(5) the trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

(6) the employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

EFFECT OF "SALE" ON THE RELATIONSHIP

An employment relationship may exist between the parties to a transaction which is nominally a "sale." An employee is not converted into an independent contractor by virtue of a fictitious "sale" of the goods produced by him to an employer, so long as the other indications of the employment relationship exist. Homeworkers who "sell" their products to a manufacturer are his employees where the control exercised by him over the homeworkers through his ability to reject or refuse to "buy" the product is not essentially different from the control ordinarily exercised by a manufacturer over his employees performing work for him at home on a piece rate basis.

FRANCHISE AGREEMENTS

The Act generally provides that a retail or service establishment which is under independent ownership would not lose its independent status solely because it operates under a franchise agreement. On the other hand, the franchised establishment and its employees may, in certain situations, be considered to be part of the franchisor's business. This would be particularly relevant in a situation where a franchisee is in control of the details of the day to day operations of the establishment, but the franchisor retains control over the basic aspects of the business. Where such a situation exists, they would be considered to be parts of a single business, and the employees of the franchised outlet would be considered to be employees of the franchisor.

FACTORS WHICH ARE NOT MATERIAL

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where the work is performed, the absence of a formal employment agreement and whether the alleged independent contractor is licensed by the State or local government are not considered to have a bearing on determinations as to whether or not there is an employment relationship. Similarly, whether a worker is paid by the piece, by the job, partly or entirely by tips, on a percentage basis, by commissions or by any other method is immaterial. The Supreme Court has held that the time or mode of compensation does not control the determination of employee status.

EFFECT OF EMPLOYMENT RELATIONSHIP

Once it is determined that one who is reputedly an independent contractor is in fact an employee, then all the employees of the so-called independent contractor engaged in the work for the principal employer likewise become the employees of the principal employer, who is responsible for compliance with the Act. However, in order to protect himself against the "hot goods" prohibition of the Act, a manufacturer or producer should undertake to see that even a true independent contractor complies with the law.

VOLUNTEER SERVICES

The Act defines the term "employ" as including "to suffer or permit to work". However, the Supreme Court has made it clear that the Act was not intended "to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another". In administering the Act, the Department follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered as employees of the religious, charitable and similar nonprofit corporations which receive their services.

For example, members of civic organizations may help out in a sheltered workshop; women's organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or the elderly; mothers may assist in a school library or cafeteria as a public duty to maintain effective services for their children; or fathers may drive a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable, educational, or religious programs. The fact that services are performed under such circumstances is not sufficient to create an employee-employer relationship.

Religious, Charitable or Nonprofit Organizations: There is no special provision in the Act which precludes an employee-employer relationship between a religious, charitable, or nonprofit organization and persons who perform work for such an organization. For example, a church or religious organization may operate an institution of higher education and employ a regular staff who do this work as a means of livelihood. In such cases there is an employee-employer relationship for purposes of the Act.

There are certain circumstances where an individual who is a regular employee of a religious, charitable or non-profit organization may donate services as a volunteer and the time so spent is not considered to be compensable "work". For example, an office employee of a hospital may volunteer to sit with a sick child or elderly person during off-duty hours as an act of charity. The Department will not consider that an employee-employer relationship exists with respect to such volunteer time between the establishment and the volunteer or between the volunteer and the person for whose benefit the service is performed. However, this does not mean that a regular office employee of a charitable organization, for example, can volunteer services on an uncompensated basis to handle correspondence in connection with a special fund drive or to handle other work arising from exigencies of the operations conducted by the employer.

Members of Religious Orders: Persons such as nuns, monks, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in schools, hospitals and other institutions operated by the church or religious order are not considered to be "employees" within the meaning of the law. However, the fact that such a person is a member of a religious order does not preclude an employee-employer relationship with a State or secular institution.

JOINT EMPLOYMENT

A single individual may stand in the relation of an employee to two or more employers at the same time under the Fair Labor Standards Act, since there is nothing in the Act which prevents an individual employed by one employer from also entering into an employment relationship with a different employer. A determination of whether the employment by the employers is to be considered joint employment or separate and distinct employments for purposes of the Act depends upon all the facts in the particular case. If the facts establish that the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s) all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the Act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the Act, including the overtime provisions, with respect to the entire employment for the particular workweek. In discharging the joint obligation each employer may, of course, take credit toward minimum wage and overtime requirements for all payments made to the employee by the other joint employer or employers.

Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) An arrangement between employers to share an employee's services. For example, two companies on the same or adjacent premises arrange to employ a janitor or watchman to perform work for both firms. Even though each entity carries the employee on its payroll for certain hours, such facts would indicate that the employee is jointly employed by both firms and both are responsible for compliance with the monetary provisions of the Act for all of the hours worked by the employee; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee. For example, employees of a temporary help company working on assignments in various establishments are considered jointly employed by the temporary help company and the establishment in which they are employed. In such a situation each individual company where the employee is assigned is jointly responsible with the temporary help company for compliance with the minimum wage requirements of the Act during the time the employee is in a particular establishment. The temporary help company would be considered responsible for the payment of proper overtime compensation to the

employee since it is through its act that the employee received the assignment which caused the overtime to be worked. Of course, if the employee worked in excess of 40 hours in any workweek for any one establishment, that employer would be jointly responsible for the proper payment of overtime as well as the proper minimum wage; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reasons of the fact that one employer controls, is controlled by, or is under common control with the other employer.

However, if all the relevant facts establish that two or more employers are acting entirely independently of each other and are completely disassociated with respect to the employment of a particular employee, who during the same workweek performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer (or employers) in determining his own responsibilities under the Act.

U.S. GOVERNMENT PRINTING OFFICE: 1988-202-109/84933

Appendix L: Child Labor Requirements in Nonagricultural Occupations Under the FLSA

APPENDIX L

Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1330

Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH-1330
Rev. August 1990

Contents

COVERAGE OF THE CHILD LABOR PROVISIONS 1
MINIMUM AGE STANDARDS FOR NONAGRICULTURAL EMPLOYMENT 1
EXEMPTIONS FROM THE CHILD LABOR PROVISIONS OF THE ACT 1
EMPLOYMENT STANDARDS FOR 14 AND 15-YEAR-OLDS 1
HAZARDOUS OCCUPATIONS ORDERS IN NONAGRICULTURAL OCCUPATIONS 3
PENALTIES FOR VIOLATION 12
AGE CERTIFICATES 12

Child Labor Bulletin No. 101

(Child Labor Bulletin No. 102 deals with employment of minors in agriculture.)

This booklet is a guide to the provisions of the Fair Labor Standards Act (also known as the Wage-Hour law) which apply to minors employed in *nonagricultural* occupations. In addition to child labor provisions, the Act also contains provisions on minimum wage, overtime, and recordkeeping.

Other Child Labor Laws

Other Federal and State laws may have higher standards. When these apply, the more stringent standard must be observed. All states have **child labor laws and compulsory school attendance laws.**

Note to Employers

Unless otherwise exempt, a covered minor employee must be paid according to the statutory minimum wage and overtime provisions of the Act.

Coverage of the Child Labor Provisions

Who Is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and —

(1) whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated); or

(2) is engaged in the operation of a hospital, an institution primarily engaged in the care of those who are physically or mentally ill or disabled or aged, and who reside on the premises, a school for children who are mentally or physically disabled or gifted, a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or

(3) is an activity of a public agency.

Construction and laundry/dry cleaning enterprises, which were previously covered regardless of their annual dollar volume of business, are now subject to the $500,000 test.

Any enterprise that was covered by FLSA on March 31, 1990, and that ceased to be covered because of the increase in the enterprise coverage dollar volume test must continue to pay its employees not less than $3.35 an hour, and continues to be subject to the overtime pay, child labor, and recordkeeping provisions of FLSA.

Employees of firms which are not covered enterprises under FLSA may still be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time baby sitters are covered if they (1) receive at least $50 in cash wages in a calendar quarter from their employers, or (2) work a total of more than 8 hours a week for one or more employers.

In or About an Establishment Producing Goods for Commerce

Producers, manufacturers, or dealers are prohibited from shipping or delivering for shipment in interstate commerce any goods produced in an establishment in or about which oppressive child labor has been employed within 30 days prior to the removal of the goods. It is not necessary for the employees to be working on the goods that are removed for shipment in order to be covered.

Minimum Age Standards for Nonagricultural Employment

Oppressive Child Labor is Defined as Employment of Children Under the Legal Minimum Ages

14 Minimum age for employment in specified occupations outside school hours for limited periods of time each day and each week.

16 BASIC MINIMUM AGE FOR EMPLOYMENT. At 16 years of age youths may be employed in any occupation, other than a nonagricultural occupation declared hazardous by the Secretary of Labor.

18 Minimum age for employment in nonagricultural occupations declared hazardous by the Secretary of Labor.

- No minimum age for employment which is exempt from the child labor provisions of the Act.
- No minimum age for employment with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory as limited by section 13(f) of the Act.

Exemptions From the Child Labor Provisions of the Act

The Child Labor Provisions Do Not Apply To:

- Children under 16 years of age employed by their parents in occupations other than manufacturing or mining, or occupations declared hazardous by the Secretary of Labor.
- Children employed as actors or performers in motion pictures, theatrical, radio, or television productions.
- Children engaged in the delivery of newspapers to the consumer.
- Homeworkers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens).

Employment Standards for 14 and 15-Year-Olds

(These standards are published in Subpart C of Part 570 of Title 29 of the Code of Federal Regulations, Child Labor Regulation No. 3)

Employment of 14 and 15-year-old minors is limited to certain occupations under conditions which do not interfere with their schooling, health, or well-being.

Hours-Time Standards

14 AND 15-YEAR-OLD MINORS MAY NOT BE EMPLOYED:

1. DURING SCHOOL HOURS, *except* as provided for in Work Experience and Career Exploration Programs.
2. BEFORE 7 a.m. or AFTER 7 p.m. *except* 9 p.m. from June 1 through Labor Day (time depends on local standards).
3. MORE THAN 3 HOURS A DAY —on school days.
4. MORE THAN 18 HOURS A WEEK—in school weeks.
5. MORE THAN 8 HOURS A DAY—on nonschool days.
6. MORE THAN 40 HOURS A WEEK—in nonschool weeks.

Permitted Occupations for 14 and 15-Year-Old Minors in Retail, Food Service and Gasoline Service Establishments

14 AND 15-YEAR-OLD MINORS MAY BE EMPLOYED IN:

1. OFFICE and CLERICAL WORK (including operation of office machines).
2. CASHIERING, SELLING, MODELING, ART WORK, WORK IN ADVERTISING DEPARTMENTS, WINDOW TRIMMING and COMPARATIVE SHOPPING.
3. PRICE MARKING and TAGGING by hand or by machine, ASSEMBLING ORDERS, PACKING and SHELVING.
4. BAGGING and CARRYING OUT CUSTOMERS' ORDERS.
5. ERRAND and DELIVERY WORK by foot, bicycle, and public transportation.
6. CLEANUP WORK, including the use of vacuum cleaners and floor waxers, and MAINTENANCE of GROUNDS, but not including the use of power-driven mowers or cutters.
7. KITCHEN WORK and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders.
8. WORK IN CONNECTION WITH CARS and TRUCKS if confined to the following:

   Dispensing gasoline and oil.

   Courtesy service on premises of gasoline service station.

   Car cleaning, washing, and polishing.

   Other occupations permitted by this section.

   BUT NOT INCLUDING WORK:

   Involving the use of pits, racks or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.
9. CLEANING VEGETABLES and FRUITS, and WRAPPING, SEALING, LABELING, WEIGHING, PRICING, and STOCKING GOODS when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.

In Any Other Place of Employment

14 AND 15-YEAR-OLD MINORS MAY BE EMPLOYED IN any occupation *EXCEPT* the excluded occupations listed below.

14 AND 15-YEAR OLD MINORS MAY NOT BE EMPLOYED IN:

1. Any MANUFACTURING occupation.
2. Any MINING occupation.
3. PROCESSING occupations such as filleting of fish, dressing poultry, cracking nuts, or laundering as performed by commercial laundries and dry cleaning *(except* in a retail, food service, or gasoline service establishment in those specific occupations expressly permitted there in accordance with the foregoing list).
4. Occupations requiring the performance of any duties in WORKROOMS or WORKPLACES WHERE GOODS ARE MANUFACTURED, MINED, OR OTHER WISE PROCESSED *(except* to the extent expressly permitted in retail, food service, or gasoline service establishments in accordance with the foregoing list).
5. PUBLIC MESSENGER SERVICE.
6. OPERATION OR TENDING OF HOISTING APPARATUS or of ANY POWER-DRIVEN MACHINERY) other than office machines and machines in retail, food service, and gasoline service establishments which are specified in the foregoing list as machines which such minors may operate in such establishments).
7. ANY OCCUPATIONS FOUND AND DECLARED TO BE HAZARDOUS.
8. OCCUPATIONS IN CONNECTION WITH:
   a. TRANSPORTATION of persons or property by rail, highway, air, on water, pipeline, or other means.
   b. WAREHOUSING and STORAGE.
   c. COMMUNICATIONS and PUBLIC UTILITIES.
   d. CONSTRUCTION (including repair).

   Except Office or Sales Work in connection with a., b., c., and d. when not performed on transportation media or at the actual construction site.
9. ANY OF THE FOLLOWING OCCUPATIONS IN A RETAIL, FOOD SERVICE, OR GASOLINE SERVICE ESTABLISHMENT:
   a. WORK performed IN or ABOUT

BOILER or ENGINE ROOMS.
b. Work in connection with MAINTENANCE or REPAIR OF THE ESTABLISHMENT, MACHINES or EQUIPMENT.
c. OUTSIDE WINDOW WASHING that involves working from window sills, and all work requiring the use of LADDERS, SCAFFOLDS, or their substitutes.
d. COOKING (*except* at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and BAKING.
e. Occupations which involve OPERATING, SETTING UP, ADJUSTING, CLEANING, OILING, or REPAIRING, power-driven FOOD SLICERS and GRINDERS, FOOD CHOPPERS and CUTTERS, and BAKERY-TYPE MIXERS.
f. Work in FREEZERS and MEAT COOLERS and all work in PREPARATION OF MEATS for sale (*except* wrapping, sealing, labeling, weighing, pricing, and stocking when performed in other areas).
g. LOADING and UNLOADING GOODS to and from trucks, railroad cars, or conveyors.
h. All occupations in WAREHOUSES *except* office and clerical work.

Exceptions

WORK EXPERIENCE AND CAREER EXPLORATION PROGRAMS (WECEP)

Some of the provisions of Child Labor Regulation No. 3 are varied for 14 and 15-year-olds in approved school-supervised and school-administered Work Experience and Career Exploration Programs (WECEP). Enrollees in WECEP may be employed:

- During school hours.
- For as many as 3 hours on a school day.
- For as many as 23 hours in a school week.
- In occupations otherwise prohibited for which a variation has been granted by the Administrator of the Wage and Hour Division.

The State Educational Agency must obtain approval from the Administrator of the Wage and Hour Division before operating a WECEP program.

Hazardous Occupations Orders in Nonagricultural Occupations

(These Orders are published in Subpart E of Part 570 of Title 29 of the Code of Federal Regulations.)

Hazardous Occupations Orders

The Fair Labor Standards Act provides a minimum age of 18 years for any nonagricultural occupations which the Secretary of Labor "shall find and by order declare" to be particularly hazardous for 16 and 17-year-old persons, or detrimental to their health and well-being. This minimum age applies even when the minor is employed by the parent or person standing in place of the parent.

The 17 hazardous occupations orders now in effect apply either on an industry basis, specifying the occupations in the industry that are not covered, or on an occupational basis irrespective of the industry in which found.

The Orders in Effect Deal With:

1. Manufacturing and storing explosives, (p. 3)
2. Motor-vehicle driving and outside helper. (p. 4)
3. Coal mining. (p. 4)
4. Logging and sawmilling. (p. 5)
5. Power-driven woodworking machines. (p. 5)
6. Exposure to radioactive substances. (p. 6)
7. Power-driven hoisting apparatus. (p. 6)
8. Power-driven metal-forming, punching, and shearing machines. (p. 7)
9. Mining, other than coal mining. (p. 8)
10. Slaughtering, or meat-packing, processing, or rendering. (p. 9)
11. Power-driven bakery machines. (p. 9)
12. Power-driven paper-products machines. (p. 10)
13. Manufacturing brick, tile, and kindred products. (p. 10)
14. Power-driven circular saws, band saws, and guillotine shears. (p. 11)
15. Wrecking, demolition, and shipbreaking operations. (p. 11)
16. Roofing operations. (p. 11)
17. Excavation operations. (p. 11)

Manufacturing or Storage Occupations Involving Explosives (Order No. 1)

The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components are prohibited:

1. All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in subparagraph 2. of this paragraph) manufacturing or storing explosives or articles containing explosive components *except* where the occupation is performed in a "nonexplosives area" as defined in subparagraph 3. of this section.
2. The following occupations in or about any plant or establishment manufacturing or storing small arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:
   a. All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

b. All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.
c. All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.
d. All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.
e. All occupations involved in the loading, inspecting, packing, shipping, and storage of blasting caps.

Definitions

1. The term "plant or establishment manufacturing or storing explosives or articles containing explosive components" means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.
2. The terms "explosives" and "articles containing explosive components" mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR Parts 71-78) issued pursuant to the Act of June 25, 1948 (62 Stat. 739; 18 U.S.C. 835)
3. An area meeting all of the following criteria shall be deemed a "nonexplosives area":
    a. None of the work performed in the area involves the handling or use of explosives;
    b. The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings;
    c. The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and
    d. Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria a. through c.

Motor Vehicle Occupations (Order No. 2)

The occupations of motor-vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type identified in 29 CFR 570.68(a) are prohibited for minors between 16 and 18 years of age *except* as provided in the following exemptions:

Exemptions

1. Incidental and occasional driving. The finding and declaration in this Order shall not apply to the operation of automobiles or trucks not exceeding 6,000 pounds gross vehicle weight if such driving is restricted to daylight hours; provided, such operation is only occasional and incidental to the child's employment; that the child holds a State license valid for the type of driving involved in the job performed and has completed a State approved driver education course; and provided further, that the vehicle is equipped with a seat belt or similar device for the driver and for each helper, and the employer has instructed each child that such belts or other devices must be used. This exemption shall not be applicable to any occupation of motor-vehicle driver which involves the towing of vehicles.
2. School bus driving. The finding and declaration in this Order shall not apply to driving a school bus during the period of any exemption which has been granted in the discretion of the Secretary of Labor on the basis of an application filed and approved by the Governor of the State in which the vehicle is registered. The Secretary will notify any State which inquires of the information to be furnished in the application. Neither shall the finding and declaration in this Order apply in a particular State during a period not to exceed 40 days while application for such exemption is being formulated by such State seeking merely to continue in effect unchanged its current program using such drivers, nor while such application is pending action by the Secretary.

Definitions

1. The term "motor vehicle" shall mean any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.
2. The term "driver" shall mean any individual who, in the course of employment, drives a motor vehicle at any time.
3. The term "outside helper" shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.
4. The term "gross vehicle weight" includes the truck chassis with lubricants, water, and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body, and special chassis and body equipment, and payload.

Coal Mine Occupations (Order No. 3)

All occupations in or about any coal mine are prohibited *except* the occupations of slate or other refuse picking at a picking table or picking chute in a tipple or breaker and occupations requiring the performance of duties solely in offices or in repair or maintenance shops located in the surface part of any coal-mining plant.

Definitions

1. The term "coal" shall mean any rank of coal, including lignite, bituminous, and anthracite coals.
2. The term "all occupations in or about any coal mine" shall mean all types of work performed in any underground working, open pit, or surface part of any coal-mining plant that contributes to the extraction, grading, cleaning, or other handling of coal.

Logging and Sawmilling Occupations
(Order No. 4)

All occupations in logging and all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill are prohibited *except* the following:

1. Exceptions applying to logging:
   a. Work in offices or in repair of maintenance shops.
   b. Work in the construction, operation, repair, or maintenance of living and administrative quarters of logging camps.
   c. Work in timber cruising, surveying, or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; work in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining fire-fighting equipment, constructing and maintaining telephone lines, or acting as fire lookout or fire patrolman away from the actual logging operations: *Provided,* that the provisions of this paragraph shall not apply to the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles.
   d. Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging occupations declared hazardous by this section.
   e. Work in the feeding or care of animals.
2. Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage-stock mill; *Provided*, that these exceptions do not apply to a portable sawmill the lumber yard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained: and *Further provided,* that these exceptions do not apply to work which entails entering the sawmill building:
   a. Work in offices or in repair or maintenance shops.
   b. Straightening, marking, or tallying lumber on the dry chain or the dry drop sorter.
   c. Pulling lumber from the dry chain.
   d. Cleanup in the lumberyard.
   e. Piling, handling, or shipping of cooperage stock in yards or storage sheds, other than operating or assisting in the operation of power-driven equipment.
   f. Clerical work in yards or shipping sheds, such as done by ordermen, tallymen, and shipping clerks.
   g. Cleanup work outside shake and shingle mills, *except* when the mill is in operation.
   h. Splitting shakes manually from pre-cut and split blocks with a froe and mallet, *except* inside the mill building or cover.
   i. Packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, *except* inside the mill building or cover.
   j. Manual loading of bundles of shingles or shakes into trucks or railroad cars, *provided* that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury to himself.

Definitions

1. The term "all occupations in logging" shall mean all work performed in connection with the felling of timber; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting, and unloading of such products in connection with logging; the constructing, repairing, and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging. The term shall not apply to work performed in timber culture, timber-stand improvement, or in emergency fire-fighting.
2. The term "all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill" shall mean all work performed in or about any such mill in connection with storing of logs and bolts; converting logs or bolts in sawn lumber, laths, shingles, or cooperage stock, or other products of such mills; and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term shall not include work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing-mill or remanufacturing plant not a part of a sawmill.

Power-Driven Woodworking Machine Occupations
(Order No. 5)

The following occupations involved in the operation of power-driven woodworking machines are prohibited:

1. The occupation of operating

power-driven woodworking machines including supervising or controlling the operation of such machines, feeding material into such machines, and helping the operator to feed material into such machines, but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding.

2. The occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines.
3. The operations of off-bearing from circular saws and from guillotine-action veneer clippers.

Definitions

1. The term "power-driven woodworking machines" shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer.
2. The term "off-bearing" shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include: (a) the removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expulsion roller, and (b) the following operations when they do not involve the removal of material or refuse directly from a saw table or from a point of operation: the carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials.

Exemptions

The exemption for apprentices and student-learners apply to this Order, see page 12.

Occupations Involving Exposure to Radioactive Substances and to Ionizing Radiations (Order No. 6)

The following occupations are prohibited:

1. Any work in any workroom in which (a) radium is stored or used in the manufacture of self-luminous compound; (b) self-luminous compound is made, processed, or packaged; (c) self-luminous compound is stored, used, or worked upon; (d) incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; (e) other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection, as set forth in the 40-hour week column of Table One of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and In Water for Occupational Exposure," issued June 5, 1959.
2. Any other work which involves exposure to ionizing radiations in excess of 0.5 rem per year.

Definitions

As used in this section:

1. The term "self-luminous compound" shall mean any mixture of phosphorescent material and radium, mesothorium, or other radioactive element.
2. The term "workroom" shall include the entire area bounded by walls of solid material and extending from floor to ceiling.
3. The term "ionizing radiations" shall mean alpha and beta particles, electrons, protons, neutrons, gamma, and x-ray and all other radiations which produce ionizations directly or indirectly, but does not include electromagnetic radiations other than gamma and x-ray.

Power-Driven Hoisting Apparatus Occupations (Order No. 7)

The following occupations involved in the operation of power-driven hoisting apparatus are prohibited:

1. Work of operating an elevator, crane, derrick, hoist, or high-lift truck, *except* operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding 1 ton capacity.
2. Work which involves riding on a manlift or on a freight elevator, *except* a freight elevator operated by an assigned operator.
3. Work of assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

Definitions

1. The term "elevator" shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators (including portable elevators or tiering machines) but shall not include dumbwaiters.
2. The term "crane" shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingotpouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, simigantry, semiportal, storage bridge, tower, walking jib, and wall cranes.
3. The term "derrick" shall mean a power-driven apparatus consisting of a mast or equivalent

members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism and operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy, and stiff-leg derricks.

4. The term "hoist" shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term shall include all types of hoists, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum, and trolley suspension hoists.
5. The term "high-lift truck" shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork, or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include high-lift trucks known under such names as forklifts, fork trucks, forklift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of, material.
6. The term "manlift" shall mean a device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain, or similar method of suspension; such belt, cable, or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

Exception

This section shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door, and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all such doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over travel by the car.

Definitions as used in this exception:

1. For the purpose of this exception the term "automatic elevator" shall mean a passenger elevator, a freight elevator, or a combination passenger-freight elevator, the operation of which is controlled by pushbuttons in such a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.
2. For the purpose of this exception, the term "automatic signal operation elevator" shall mean an elevator which is started in response to the operation of a switch (such as a lever or pushbutton) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

Power-Driven Metal Forming, Punching, and Shearing Machine Occupations (Order No. 8)

The following occupations are prohibited:

1. The occupations of operator of or helper on the following power-driven metal forming, punching, and shearing machines:
   a. All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.
   b. All pressing or punching machines, such as punch presses *except* those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.
   c. All bending machines, such as apron brakes and press brakes.
   d. All hammering machines, such as drop hammers and power hammers.
   e. All shearing machines, such as guillotine or squaring shears; alligator shears; and rotary shears.
2. The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

Definitions

1. The term "operator" shall mean a person who operates a machine covered by this Order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

2. The term "helper" shall mean a person who assists in the operation of a machine covered by this Order by helping place materials into or removing them from the machine.
3. The term "forming, punching, and shearing machines" shall mean power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving parts. Types of forming, punching and shearing machines enumerated in this section are the machines to which the designation is by custom applied.

NOTE: This Order does not apply to a very large group of metal-working machines known as machine tools. Machine tools are defined as "power-driven complete metal-working machines having one or more tool-or work-holding devices, and used for progressively removing metal in the form of chips." Since the Order does not apply to machine tools, the 18-year age minimum does not apply. Such machine tools are classified below so that they can be readily identified.

MILLING FUNCTION MACHINES
Horizontal Milling Machines
Vertical Milling Machines
Universal Milling Machines
Planer-type Milling Machines
Gear Hobbing Machines
Profilers
Routers

TURNING FUNCTION MACHINES
Engine Lathes
Turret Lathes
Hollow Spindle Lathes
Automatic Lathes
Automatic Screw Machines

PLANING FUNCTION MACHINES
Planers
Shapers
Slotters
Broaches
Keycasters
Hack Saws

GRINDING FUNCTION MACHINES
Grinders
Abrasive Wheels
Abrasive Belts
Abrasive Disks
Abrasive Points
Polishing Wheels
Buffing Wheels
Stroppers
Lapping Machines

BORING FUNCTION MACHINES
Vertical Boring Mills
Horizontal Boring Mills
Jig Borers
Pedestal Drills
Radial Drills
Gang Drills
Upright Drills
Drill Press, etc.
Centering Machines
Reamers
Honers

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Occupations in Connection With Mining, Other Than Coal (Order No. 9)

All occupations in connection with mining, other than coal, are prohibited *except* the following:

1. Work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or maintenance shops not located underground.
2. Work in the operation and maintenance of living quarters.
3. Work outside the mine in surveying, in the repair and maintenance of roads, and in general cleanup about the mine property such as clearing brush and digging drainage ditches.
4. Work of track crews in the building and maintaining of sections of railroad track located in those areas of open-cut metal mines where mining and haulage activities are not being conducted at the time and place that such building and maintenance work is being done.
5. Work in or about surface placer mining operations other than placer dredging operations and hydraulic placer mining operations.
6. The following work in metal mills other than in mercury-recovery mills or mills using the cyanide process:
   a. Work involving the operation of jigs, sludge tables, flotation cells, or drier-filters.
   b. Work of hand sorting at picking table or picking belt.
   c. General cleanup work.

Provided, however, that nothing in this section shall be construed as permitting employment of minors in any occupation prohibited by any other hazardous occupations order issued by the Secretary of Labor.

Definitions

As used in this section: The term "all occupations in connection with mining, other than coal" shall mean all work performed underground in mines and quarries; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand, or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing, or cleaning operations performed upon the extracted minerals *except* where such operations are performed as a part of a manufacturing process. The term shall not include work performed in subsequent manufacturing or processing operations, such as work performed in smelters, electrometallurgical plants, refineries, reduction plants, cement mills, plants where quarried stone is cut, sanded, and further processed, or plants manufacturing clay, glass, or ceramic products. Neither shall the term include work performed in connection with coal mining, in petroleum production, in natural-gas production, nor in dredging operations which are not a part of mining operations, such as dredging for construction or navigation purposes.

Occupations Involving Slaughtering, Meat-Packing or Processing, or Rendering (Order No. 10)

The following occupations in or about slaughtering and meat-packing establishments, rendering plants, or wholesale, retail or service establishments are prohibited:

1. All occupations on the killing floor, in curing cellars, and in hide cellars, *except* the work of messengers, runners, hand-truckers, and similar occupations which require entering such workrooms or workplaces infrequently and for short periods of time.
2. All occupations involved in the recovery of lard and oils, *except* packaging and shipping of such products and the operations of lard-roll machines.
3. All occupations involved in tankage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.
4. All occupations involved in the operation or feeding of the following power-driven meat-processing machines, including the occupations of setting-up, adjusting, repairing, oiling, or cleaning such machines: meat patty forming machines, meat and bone cutting saws, knives (**except* bacon-slicing machines), head splitters, and guillotine cutters; snout pullers and jaw pullers; skinning machines; horizontal rotary washing machines; casing-cleaning machines such as crushing, stripping, and finishing machines; grinding, mixing, chopping, and hashing machines; and presses (*except* belly-rolling machines).
5. All boning occupations.
6. All occupations that involve the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.
7. All occupations involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

Definitions

1. The term "slaughtering and meat-packing establishments" shall mean places in or about which cattle, calves, hogs, sheep, lambs, goats, or horses are killed, butchered, or processed. The term shall also include establishments which manufacture or process meat products or sausage casings from such animals.
2. The term "rendering plants" shall mean establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.
3. The term "killing floor" shall include that workroom or workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.
4. The term "curing cellar' shall include that workroom or workplace which is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include that workroom or workplace where meats are smoked.
5. The term "hide cellar" shall include that workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.
6. The term "boning occupations" shall mean the removal of bones from meat cuts. It shall not include work that involves cutting, scraping, or trimming meat from cuts containing bones.

NOTE: This Order shall not apply to the killing and processing of poultry, rabbits, or small game in areas physically separated from the "killing floor".

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Power-Driven Bakery Machine Occupations (Order No. 11)

The following occupations involved in the operation of power-driven bakery machines are prohibited:

1. The occupations of operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer, batter mixer, bread dividing, rounding, or molding machine; dough brake; dough sheeter, combination bread slicing and wrapping machine; or cake cutting band saw.
2. The occupation of setting up or adjusting a cooky or cracker machine.

NOTE: This Order does not apply to the following list of bakery machines which may be operated by 16 and 17-year-old minors:

INGREDIENT PREPARATION AND MIXING

Flour-sifting Machine Operator
Flour-blending Machine Operator
Sack-cleaning Machine Operator

PRODUCT FORMING AND SHAPING

Roll-dividing Machine Operator
Roll-making Machine Operator
Batter-sealing Machine Operator
Depositing Machine Operator
Cooky or Cracker Machine Operator
Wafer Machine Operator
Pretzel-stick Machine Operator
Pie-dough Sealing Machine Operator
Pie-dough Rolling Machine Operator
Pie-crimping Machine Operator

---

*Note: The term "bacon-slicing machines" as used in this Order refers to those machines which are designed solely for the purpose of slicing bacon and are equipped with enclosure or barrier guards that prevent the operator from coming in contact with the blade or blades, and with devices for automatic feeding, slicing, shingling, stacking, and conveying the sliced bacon away from the point of operation

FINISHING AND ICING

Depositing Machine Operator
Enrobing Machine Operator
Spray Machine Operator
Icing Mixing Machine Operator

SLICING AND WRAPPING

Roll Slicing and Wrapping Machine Operator
Cake Wrapping Machine Operator
Carton Packing and Sealing Machine Operator

PAN WASHING

Spray-type Pan Washing Machine Operator
Tumbler-type Pan Washing Machine Operator

Power-Driven Paper-Products Machine Occupations
(Order No. 12)

The following occupations are prohibited:

1. The occupations of operating or assisting to operate any of the following power-driven paper-products machines:
   a. Arm-type wirestitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single- or double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.
   b. Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.
2. The occupations of setting up, adjusting, repairing, oiling or cleaning these machines including those which do not involve hand feeding.

Definitions

1. The term "operating or assisting to operate" shall mean all work which involves starting or stopping a machine covered by this Order, placing materials into or removing them from the machine, or any other work directly involved in operating the machine.
2. The term "paper-products machine" shall mean power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product. The term is understood to apply to such machines whether they are used in establishments that manufacture converted paper pulp products, or in any other type of manufacturing or nonmanufacturing establishment.

NOTE: There are many machines not covered by this Order. The most important of these machines are the following:

Bag Machine, Bag-Making Machine
Bottoming Machine (Bags)
Box-Making Machine (Collapsible Boxes)
Bundling Machine
Calendar Roll and Plating Machines
Cigarette Carton Opener and Tax Stamping Machine
Clasp Machine
Counting, Stacking, and Ejecting Machine
Corner Stayer
Covering, Lining, or Wrapping Machines (Set-up Boxes)
Creping Machine
Dornbusch Machine (Wall Paper)
Ending Machine (Set-up Boxes)
Envelope Machine
Folding Machine
Gluing, Scaling, or Gumming Machine
Interfolding Machine
Jogging Machine
Lacer Machine
Parchmentizing, Waxing, or Coating Machines
Partition Assembling Machine
Paper Cut Machine
Quadruple Stayer
Rewinder
Rotary Printing Press
Ruling Machine
Slitting machine
Straw Winder
Stripping Machine
Taping Machine
Tube Cutting Machine
Tube Winder
Tube Machine (Paper Bags)
Window Patch Machine
Wire or Tag Stringing Machine

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Occupations Involved in the Manufacture of Brick, Tile, and Kindred Products
(Order No. 13)

The following occupations involved in the manufacture of clay construction products and of silica refractory products are prohibited:

1. All work in or about establishments in which clay construction products are manufactured, *except* (a) work in storage and shipping, (b) work in offices, laboratories, and storerooms; and (c) work in the drying departments of plants manufacturing sewer pipe.
2. All work in or about establishments in which silica brick or other silica refractories are manufactured *except* work in offices.
3. Nothing in this section shall be construed as permitting employment of minors in any occupation prohibited by any other hazardous occupations order issued by the Secretary of Labor.

Definitions

1. The term "clay construction products" shall mean the following clay products: Brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. The term shall not include the following non-structural-bearing clay products: Ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor shall the term include non-clay construction products such as sand-lime brick, glass brick, or non-clay refractories.
2. The term "silica brick or other silica refractories" shall mean refractory products produced

from raw materials containing free silica as their main constitutent.

Occupations Involved in the Operation of Power-Driven Circular Saws, Band Saws, and Guillotine Shears (Order No. 14)

The following occupations are prohibited:

1. The occupations of operator of or helper on the following power-driven fixed or portable machines *except* for machines equipped with full automatic feed and ejection:
    a. Circular saws.
    b. Band saws.
    c. Guillotine shears.
2. The occupations of setting up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

Definitions

1. The term "operator" shall mean a person who operates a machine covered by this Order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.
2. The term "helper" shall mean a person who assists in the operation of a machine covered by this Order by helping place materials into or removing them from the machine.
3. The term "machine equipped with full automatic feed and ejection" shall mean machines covered by this Order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.
4. The term "circular saw" shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.
5. The term "band saw" shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.
6. The term "guillotine shear" shall mean a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Occupations Involved in Wrecking, Demolition, and Shipbreaking Operations (Order No. 15)

All occupations in wrecking, demolition, and shipbreaking operations are prohibited.

Definitions

The term "wrecking, demolition, and shipbreaking operations" shall mean all work, including cleanup and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel.

Occupations in Roofing Operations (Order No. 16)

All occupations in roofing operations are prohibited.

Definitions

The term "roofing operations" shall mean all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term shall also include all work performed in connection with: (1) The installation of roofs, including related metal work such as flashing, and (2) alterations, additions, maintenance, and repair, including painting and coating, of existing roofs. The term shall not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Occupations in Excavation Operations (Order No. 17)

The following occupations in excavation operations are prohibited:

1. Excavating, working in, or backfilling (refilling) trenches, *except* (a) manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point, or (b) working in trenches that do not exceed four feet in depth at any point.
2. Excavating for buildings or other structures or working in such excavations, *except* (a) manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, or (b) working in an excavation not exceeding such depth, or (c) working in an excavation where the side walls are shored or sloped to the angle of repose.
3. Working within tunnels prior to the completion of all driving and shoring operations.
4. Working within shafts prior to the completion of all sinking and shoring operations.

(continued on next page)

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see below.

Exemptions From Hazardous Occupations Orders

Hazardous Occupations Orders Nos. 5, 8, 10, 12, 14, 16, and 17 contain exemptions for 16 and 17-year-old apprentices and student-learners provided they are employed under the following conditions:

I. Apprentices: (1) The apprentice is employed in a craft recognized as an apprenticeable trade; (2) the work of the apprentice in the occupations declared particularly hazardous is incidental to his training; (3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and (4) the apprentice is registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor as employed in accordance with the standards established by that Bureau, or is registered by a State agency as employed in accordance with the standards of the State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of Labor to conform substantially with such Federal or State standards.

II. Student-Learners: (1) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school; and (2) such student-learner is employed under a written agreement which provides: (i) That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to the training; (ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person; (iii) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and (iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of the student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in an occupation in which training has been completed as provided in this paragraph as a student-learner, even though the youth is not yet 18 years of age.

Penalties For Violation

For each violation of the child labor provisions or any regulation issued thereunder, employers may be subject to a civil money penalty up to $1,000.

The Act was amended, effective May 1, 1974, authorizing (in section 16(e)) the Secretary of Labor to assess a civil money penalty of not to exceed $1,000 for each violation of the child labor provisions of the Act or any regulation issued thereunder. When a child labor civil money penalty is assessed against an employer, the employer has the right, within 15 days after receipt of the notice of such penalty, to file an exception to the determination that the violation or violations of the child labor provisions occurred. When such an exception is filed with the Administrator of the Wage and Hour Division, the matter is referred to the Chief Administrative Law Judge, and a formal hearing is scheduled. At such a hearing the employer may, or an attorney retained by the employer may, present such witnesses, introduce such evidence and establish such facts as the employer believes will support the exception. The determination of the amount of any civil money penalty becomes final if no exception is taken to the administrative assessment thereof, or if an exception is filed pursuant to the decision and order of the administrative law judge.

The Act also provides, in the case of willful violation, for a fine up to $10,000; or, for a second offense committed after the conviction of such person for a similar offense, for a fine of not more than $10,000; or imprisonment for not more than 6 months, or both. The Secretary of Labor may also ask a Federal district court to restrain future violations of the child labor provisions of the Act by injunction.

Age Certificates

Employers may protect themsleves from unintentional violation of the child labor provisions by keeping on file an employment or age certificate for each minor employed to show that the minor is the minimum age for the job. Certificates issued under most State laws are acceptable for purposes of the Act.

Additional Information

Inquiries about the Fair Labor Standards Act will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under U.S. Department of Labor in the U.S. Government listing. These offices also supply publications free of charge.

★U.S. Government Printing Office: 1990-262-288/26245

Appendix M: Child Labor Requirements in Agriculture Under the FLSA

APPENDIX M

Child Labor Requirements in Agriculture Under the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1295

Child Labor Requirements In Agriculture Under The Fair Labor Standards Act
(Child Labor Bulletin No. 102)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1295
(Reprinted December 1984)

CHILD LABOR BULLETIN NO. 102

(Child Labor Bulletin No. 101 deals with the employment of minors in non-agricultural occupations.)

This booklet is a guide to the provisions of the Fair Labor Standards Act (also known as the Wage-Hour Law) which apply to minors employed in agriculture. In addition to child labor provisions, the Act also contains provisions on minimum wage, overtime, equal pay, and record keeping.

It is important to note that the child labor provisions of the Act apply to the agricultural employment of all children, migrant as well as local resident children.

OTHER CHILD LABOR LAWS

Other Federal and State laws may have higher standards. When these apply, the more stringent standard must be observed. All states have child labor laws and compulsory school attendance laws.

CONTENTS

COVERAGE OF THE CHILD LABOR PROVISIONS 1

MINIMUM AGE STANDARDS FOR EMPLOYMENT IN AGRICULTURE 1

SCHOOL HOURS AND EMPLOYMENT IN AGRICULTURE 2

HAZARDOUS OCCUPATIONS IN AGRICULTURE 3

EXEMPTIONS FROM HAZARDOUS OCCUPATIONS ORDER IN AGRICULTURE 5

PENALTIES FOR VIOLATIONS 6

CERTIFICATES OF AGE 7

RECORD KEEPING FOR EMPLOYMENT OF MINORS 7

MINIMUM WAGE FOR AGRICULTURAL EMPLOYMENT 8

ADDITIONAL INFORMATION 9

COVERAGE OF THE CHILD LABOR PROVISIONS

The Fair Labor Standards Act of 1938 (FLSA) establishes minimum ages for covered employment in agriculture unless a specific exemption applies. Covered employment in agriculture includes employees whose occupations involve growing crops or raising livestock which will leave the State directly or indirectly through a buyer who will either ship them across State lines or process them as ingredients of other goods which will leave the State.

Employees covered include workers who:

-- raise livestock, bees, fur-bearing animals, or poultry;
-- cultivate the soil, grow, or harvest crops;
-- grow or harvest crops as employees of a contractor;
-- as employees of either the farmer or an independent contractor, do work on the farm which is incidental to the farming operations of that farm (such as threshing grain grown on that farm);
-- as employees of the farmer, do work off the farm which is incidental to the farming operations of the farm.

The child labor provisions may apply to employment in any of the above regardless of farm size or the number of man-days of farm labor used on that farm.

MINIMUM AGE STANDARDS FOR EMPLOYMENT IN AGRICULTURE

16 - Minimum age for employment
    -- in any agricultural occupation declared hazardous by the Secretary of Labor;
    -- during school hours;
14 - Minimum age for employment outside school hours
    -- in any agricultural occupation not declared hazardous by the Secretary of Labor;
    except:
    * 12 and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent or person standing in place of the parent is also employed;

- minors under 12 may be employed with written parental consent on farms where employees are exempt from the Federal minimum wage provisions.

Local minors (permanent residents) 10 and 11 years old may be employed outside school hours under prescribed conditions to hand harvest short season crops for no more than 8 weeks between June 1 and October 15 in any calendar year, upon approval by the Secretary of Labor of an employer's application for a waiver from the child labor provisions for such employment. A "permanent residence" means the place where the minor normally resides with his or her parent(s) year-round.

Note: Minors of any age may be employed by their parent or person standing in place of their parent at any time in any occupation on a farm owned or operated by their parent or person standing in place of their parent.

SCHOOL HOURS AND EMPLOYMENT IN AGRICULTURE

Minors under 16 years of age may not be employed during school hours unless employed by their parent or person standing in place of their parent. School hours are those set for the school district in which a minor is living while employed in agriculture.

For example:

- If the school is in session from 9 a.m. to 3 p.m. in the school district where the minor is living while working, the minor may work only before 9 a.m. or after 3 p.m. on school days.
- Work before or after school hours, during weekends, or on other days on which the school for the school district does not assemble is considered work outside school hours.
- School hours provisions apply to private as well as public schools.
- A crew leader who takes workers to an area where schools are open may not allow minors under 16 to work during the hours school is in session in the school district where the farm work is being done.
- Work during school hours refers to those hours determined on the basis of the official school calendar for the school district where the minors are living while so employed. No provision is made for the release of individual children or any class or grade to work in agriculture.

HAZARDOUS OCCUPATIONS IN AGRICULTURE

The Secretary of Labor has found and declared that the following occupations in agriculture are hazardous for minors under 16 years of age. No minor under 16 may be employed at any time in these occupations except as exempt (See page 5).

(1) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(2) Operating or assisting to operate (including starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

(ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or

(iii) Power post-hole digger, power post driver, or nonwalking-type rotary tiller.

(3) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Trencher or earthmoving equipment;

(ii) Fork lift;

(iii) Potato combine; or

(iv) Power-driven circular, band, or chain saw.

(4) Working on a farm in a yard, pen, or stall occupied by a:

(i) Bull, boar, or stud horse maintained for breeding purposes; or

(ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present).

(5) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.

(6) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.

(7) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

(8) Working inside:

(i) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;

(ii) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(iii) A manure pit; or

(iv) A horizontal silo while operating a tractor for packing purposes.

(9) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by Federal Environmental Pesticide Control Act of 1972, 7 U.S.C. 136 et seq.) as Toxicity Category I, identified by the word "Danger" and/or "Poison" with skull and crossbones; or Toxicity Category II, identified by the word "Warning" on the label;

(10) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or

(11) Transporting, transferring, or applying anhydrous ammonia.

EXEMPTIONS FROM HAZARDOUS OCCUPATIONS ORDER IN AGRICULTURE

These prohibitions do not apply to the employment of minors under 16 years of age by their parents or by persons standing in the place of their parents on farms owned or operated by such parents or persons.

Under carefully regulated conditions, employment of 14 and 15-year-old minors in certain of the agricultural occupations found and declared to be hazardous is exempt.
They are:

STUDENT-LEARNERS

Student-learners in a bona fide vocational agriculture program may work in the occupations listed in items 1 through 6 of the hazardous occupations order under a written agreement which provides that the student-learner's work is incidental to training, intermittent, for short periods of time, and under close supervision of a qualified person; that safety instructions are given by the school and correlated with on-the-job training; and that a schedule of organized and progressive work processes has been prepared. The written agreement must contain the name of the student-learner, and be signed by the employer and a school authority, each of whom must keep copies of the agreement.

4-H FEDERAL EXTENSION SERVICE TRAINING PROGRAM

Minors 14 and 15 years old who hold certificates of completion of either the tractor operation or machine operation program may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificates of completion on file with the minor's records.

Enrollment in this program is open to minors who are not members of 4-H as well as 4-H members. Information on this program is available from an Extension Agent of the Cooperative Service of a land grant university.

VOCATIONAL AGRICULTURE TRAINING PROGRAM

Minors 14 and 15 years old who hold certificates of completion of either the tractor operation or machine operation program of the U. S. Office of Education Vocational Agriculture Training Program may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificate of completion on file with the minor's records.

Information on the Vocational Agriculture Training Program is available from vocational agriculture teachers.

PENALTIES FOR VIOLATIONS

For each violation of the child labor provisions or any regulation issued thereunder, employers may be subject to a civil money penalty of up to $1,000.

The Act was amended, effective May 1, 1974, authorizing (in section 16(e)) the Secretary of Labor to assess a civil money penalty not to exceed $1,000 for each violation of the child labor provisions of the Act or any regulation issued thereunder. When a child labor civil money penalty is assessed against an employer, the employer has the right, within 15 days after receipt of the notice of such penalty, to file an exception to the determination that the violation or violations of the child labor provisions occurred. When such an exception is filed with the Administrator of the Wage and Hour Division, the matter is referred to the Chief Administrative Law Judge, and a formal hearing is scheduled. At such hearing the employer may, or an attorney retained by the employer may, present such witnesses, introduce such evidence and establish such facts as the employer believes will support the exception. The determination of the amount of any civil money penalty becomes final if no exception is taken to the administrative assessment thereof, or if an exception is filed, pursuant to the decision and order of the administrative law judge.

The Act also provides, in the case of willful violation, for a fine up to $10,000; or, for a second offense committed after the conviction of such person for a similar offense, for a fine of not more than $10,000, or imprisonment for not more than 6 months, or both. The Secretary of Labor may also ask a Federal district court to restrain future violations of the child labor provisions of the Act by injunction.

CERTIFICATE OF AGE

Employers may protect themselves from unintentional violation of the child labor provisions by keeping on file an employment or age certificate for each minor employed to show that the minor is the minimum age for the job. Certificates issued under most State laws are acceptable for purposes of the Act.

RECORD KEEPING FOR EMPLOYMENT OF MINORS

Every employer (except a parent or person standing in the place of a parent employing one's own child on a farm owned or operated by such parent or person) who employs any minor under 16 years of age in agriculture must maintain and preserve records containing the following data about each minor employed:

1. Name in full.
2. Place where the minor lives while employed. If the minor's permanent address is elsewhere, both addresses should be given.
3. Date of birth.

4. Evidence in writing of any consent of the parent or person standing in place of the parent of the minor, if consent is required. (See pages 1 & 2 for information on the ages to which this rule applies.)

MINIMUM WAGE FOR AGRICULTURAL EMPLOYMENT

The Fair Labor Standards Act extends minimum wage provisions to farm employees, including minors, whose employer used more than 500 man-days of farm labor during any calendar quarter of the previous calendar year. Unless otherwise exempt, employees covered by the minimum wage provisions must be paid at least $3.35 an hour.

Farm workers are not subject to the overtime provisions of the Act.

No minimum wage and overtime pay is required for the following:

1. Members of the employer's immediate family.
2. Hand harvest laborers paid piece rates in an operation generally recognized as piece work in the region, under both of the following conditions: (1) they go each day to the farm from their permanent residence; and (2) they have been employed in agriculture less than 13 weeks in the previous calendar year.
3. Migrant hand harvest laborers 16 years of age or under who are employed on the same farm as their parents and under both of the following conditions: (1) they are paid piece rates in an operation generally recognized as piecework in the region; and (2) the piece rate is the same as paid workers over the age of 16.
4. Employees principally engaged in the range production of livestock.

ADDITIONAL INFORMATION

Inquiries about the Fair Labor Standards Act will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under U.S. Department of Labor in the U.S. Government listing. These offices also supply publications free of charge.

*U.S. Government Printing Office: [illegible]

Appendix N: WECEP; Certificates of Age

APPENDIX N

Work Experience and Career Exploration Programs
Certificates of Age

REGULATIONS

§ 570.35 Periods and conditions of employment.

(a) Except as provided in paragraph (b) of this section, employment in any of the occupations to which this subpart is applicable shall be confined to the following periods:

(1) Outside school hours;

(2) Not more than 40 hours in any 1 week when school is not in session;

(3) Not more than 18 hours in any 1 week when school is in session;

(4) Not more than 8 hours in any 1 day when school is not in session;

(5) Not more than 3 hours in any 1 day when school is in session;

(6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

(b) In the case of enrollees in work training programs conducted under part B of title I of the Economic Opportunity Act of 1964, there is an exception to the requirement of paragraph (a)(1) of this section if the employer has on file with his records kept pursuant to part 516 of this chapter an unrevoked written statement of the Regional Manpower Administrator or his representative setting out the periods which the minor will work and certifying that his employment confined to such periods will not interfere with his health and well-being, countersigned by the principal of the school which the minor is attending with his certificate that such employment will not interfere with the minor's schooling.

[32 FR 15478, Nov. 8, 1967. Redesignated and amended at 36 FR 25156, Dec. 29, 1971; 37 FR 5246, Mar. 11, 1972]

§ 570.35a Work experience and career exploration programs.

(a) This section varies some provisions of this subpart for the employment of minors between 14 and 16 years of age who are enrolled in and employed pursuant to a school-supervised and school-administered work-experience and career exploration program which meets the requirements of paragraph (b) of this section, in the occupations permitted under paragraph (c) of this section, and for the periods and under the conditions specified in paragraph (d) of this section. With these safeguards, such employment is found not to interfere with the schooling of the minors or with their health and well-being and therefore is not deemed to be oppressive child labor.

(b)(1) A school-supervised and school-administered work-experience and career exploration program shall meet the educational standards established and approved by the State Educational Agency in the respective State.

(2) The State Educational Agency shall file with the Administrator of the Wage and Hour Division a letter of application for approval of a State program as one not interfering with schooling or with the health and well-being of the minors involved and therefore not constituting oppressive child labor. The application must include information concerning the criteria listed in paragraph (b)(3) of this section. The Administrator of the Wage and Hour Division shall approve the application, or give prompt notice of any denial and the reasons therefor.

(3) The criteria to be used in consideration of applications are the following:

(i) *Eligibility.* Any student aged 14 or 15 years who authoritative local school personnel identify as being able to benefit from the program shall be eligible to participate.

(ii) *Credits.* Students shall receive school credits for both in-school related instruction and on-the-job experience.

(iii) *Size.* Each program unit shall be a reasonable size. A unit of 12 to 25 students to one teacher-coordinator would be generally considered reasonable. Whether other sizes are reasonable would depend upon the individial facts and circumstances involved.

(iv) *Instructional schedule.* There shall be (*a*) allotted time for the required classroom instruction in those subjects necessary for graduation under the State's standards and (*b*) regularly scheduled classroom periods of instruction devoted to job-related and to employability skill instruction.

(v) *Teacher-coordinator.* Each program unit shall be under the supervision of a school official to be designated for the purpose of the program as a teacher-coordinator, who shall generally supervise the program and coordinate the work and education aspects of the program and make regularly scheduled vists to the work stations.

(vi) *Written training agreement.* No student shall participate in the program until there has been made a written training agreement signed by the teacher-coordinator, the employer, and the student.The agreement shall also be signed or otherwise consented to by the student's parent or guardian.

(vii) *Other provisions.* Any other provisions of the program providing safeguards ensuring that the employment permitted under this section will not interfere with the schooling of the minors or with their health and well-being may also be submitted for use in consideration of the application.

(4) Every State Educational Agency having students in a program approved pursuant to the requirements of this section shall comply with the following:

(i) *Permissible occupations.* No student shall be assigned to work in any occupation other than one permitted under paragraph (c) of this section.

(ii) *Records and reports.* The names and addresses of each school enrolling work experience and career exploration program students and the number of enrollees in each unit shall be kept at the State Educational Agency office. A copy of the written training agreement for each student participating in the program shall be kept in the State Educational Agency office or in the local educational office. The records required for this paragraph shall be kept for a period of 3 years from the date of enrollment in the program and shall be made available for inspection or transcription to the representatives of the Administrator of the Wage and Hour Division.

(c) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be permitted in all occupations except the following:

(1) Manufacturing and mining.

(2) Occupations declared to be hazardous for the employment of minors between 16 and 18 years of age in subpart E of this part, and occupations in agriculture declared to be hazardous for employment of minors below the age of 16 in subpart E-1 of this part.

(3) Occupations other than those permitted under §§ 570.33 and 570.34, except upon approval of a variation in individual cases or classes of cases by the Administrator of the Wage and Hour Division after notice to interested persons and opportunity to be heard. Any such variation of general application shall be published as an amendment to this subpart. Applications for such approval may be included with the application for approval of the program; or filed specifically under § 570.38. Such applications shall be processed under § 570.38.

(d) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be confined to not more than 23 hours in any 1 week when school is in session and not more than 3 hours in any day when school is in session, any portion of which may be during school hours. Insofar as these provisions are inconsistent with the provisions of § 570.35, this section shall be controlling.

(e) The employment of a minor enrolled in a program pursuant to the requirements of this section must not have the effect of displacing a worker employed in the establishment of the employer.

(f) Programs shall be in force and effect for a period of two (2) school years from the date of their approval by the Administrator of the Wage and Hour Division. A new application for approval must be filed at the end of that period. Failure to meet the requirements of this section may result in withdrawal of approval.

(The information collection requirements contained in paragraphs (b)(3)(vi) and (4) were approved by the Office of Management and Budget under control number 1215-0121)

[40 FR 40801, Sept. 4, 1975; 40 FR 44130, Sept. 25, 1975; 47 FR 145, Jan. 5, 1982; 47 FR 28095, June 29, 1982, as amended at 49 FR 18294, Apr. 30, 1984]

§ 570.36 Certificates of age; effect.

The employment of any minor in any of the occupations to which this subpart is applicable, if confined to

§ 570.35 Periods and conditions of employment.

(a) Except as provided in paragraph (b) of this section, employment in any of the occupations to which this subpart is applicable shall be confined to the following periods:

(1) Outside school hours;

(2) Not more than 40 hours in any 1 week when school is not in session;

(3) Not more than 18 hours in any 1 week when school is in session;

(4) Not more than 8 hours in any 1 day when school is not in session;

(5) Not more than 3 hours in any 1 day when school is in session;

(6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

(b) In the case of enrollees in work training programs conducted under part B of title I of the Economic Opportunity Act of 1964, there is an exception to the requirement of paragraph (a)(1) of this section if the employer has on file with his records kept pursuant to part 516 of this chapter an unrevoked written statement of the Regional Manpower Administrator or his representative setting out the periods which the minor will work and certifying that his employment confined to such periods will not interfere with his health and well-being, countersigned by the principal of the school which the minor is attending with his certificate that such employment will not interfere with the minor's schooling.

[32 FR 15478, Nov. 8, 1967. Redesignated and amended at 36 FR 25156, Dec. 29, 1971; 37 FR 5246, Mar. 11, 1972]

§ 570.35a Work experience and career exploration programs.

(a) This section varies some provisions of this subpart for the employment of minors between 14 and 16 years of age who are enrolled in and employed pursuant to a school-supervised and school-administered work-experience and career exploration program which meets the requirements of paragraph (b) of this section, in the occupations permitted under paragraph (c) of this section, and for the periods and under the conditions specified in paragra[illegible]) of this section. With these safeguards, such employment is found not to interfere with the schooling of the minors or with their health and well-being and therefore is not deemed to be oppressive child labor.

(b)(1) A school-supervised and school-administered work-experience and career exploration program shall meet the educational standards established and approved by the State Educational Agency in the respective State.

(2) The State Educational Agency shall file with the Administrator of the Wage and Hour Division a letter of application for approval of a State program as one not interfering with schooling or with the health and well-being of the minors involved and therefore not constituting oppressive child labor. The application must include information concerning the criteria listed in paragraph (b)(3) of this section. The Administrator of the Wage and Hour Division shall approve the application, or give prompt notice of any denial and the reasons therefor.

(3) The criteria to be used in consideration of applications are the following:

(i) *Eligibility.* Any student aged 14 or 15 years who authoritative local school personnel identify as being able to benefit from the program shall be eligible to participate.

(ii) *Credits.* Students shall receive school credits for both in-school related instruction and on-the-job experience.

(iii) *Size.* Each program unit shall be a reasonable size. A unit of 12 to 25 students to one teacher-coordinator would be generally considered reasonable. Whether other sizes are reasonable would depend upon the individial facts and circumstances involved.

(iv) *Instructional schedule.* There shall be (*a*) allotted time for the required classroom instruction in those subjects necessary for graduation under the State's standards and (*b*) regularly scheduled classroom periods of instruction devoted to job-related and to employability skill instruction.

(v) *Teacher-coordinator.* Each program unit shall be under the supervision of a school official to be designated for the purpose of the program as a teacher-coordinator, who shall generally supervise the program and coordinate the work and education aspects of the program and make regularly scheduled visits to the work stations.

(vi) *Written training agreement.* No student shall participate in the program until there has been made a written training agreement signed by the teacher-coordinator, the employer, and the student.The agreement shall also be signed or otherwise consented to by the student's parent or guardian.

(vii) *Other provisions.* Any other provisions of the program providing safeguards ensuring that the employment permitted under this section will not interfere with the schooling of the minors or with their health and well-being may also be submitted for use in consideration of the application.

(4) Every State Educational Agency having students in a program approved pursuant to the requirements of this section shall comply with the following:

(i) *Permissible occupations.* No student shall be assigned to work in any occupation other than one permitted under paragraph (c) of this section.

(ii) *Records and reports.* The names and addresses of each school enrolling work experience and career exploration program students and the number of enrollees in each unit shall be kept at the State Educational Agency office. A copy of the written training agreement for each student participating in the program shall be kept in the State Educational Agency office or in the local educational office. The records required for this paragraph shall be kept for a period of 3 years from the date of enrollment in the program and shall be made available for inspection or transcription to the representatives of the Administrator of the Wage and Hour Division.

(c) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be permitted in all occupations except the following:

(1) Manufacturing and mining.

(2) Occupations declared to be hazardous for the employment of minors between 16 and 18 years of age in subpart E of this part, and occupations in agriculture declared to be hazardous for employment of minors below the age of 16 in subpart E-1 of this part.

(3) Occupations other than those permitted under §§ 570.33 and 570.34, except upon approval of a variation in individual cases or classes of cases by the Administrator of the Wage and Hour Division after notice to interested persons and opportunity to be heard. Any such variation of general application shall be published as an amendment to this subpart. Applications for such approval may be included with the application for approval of the program; or filed specifically under § 570.38. Such applications shall be processed under § 570.38.

(d) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be confined to not more than 23 hours in any 1 week when school is in session and not more than 3 hours in any day when school is in session, any portion of which may be during school hours. Insofar as these provisions are inconsistent with the provisions of § 570.35, this section shall be controlling.

(e) The employment of a minor enrolled in a program pursuant to the requirements of this section must not have the effect of displacing a worker employed in the establishment of the employer.

(f) Programs shall be in force and effect for a period of two (2) school years from the date of their approval by the Administrator of the Wage and Hour Division. A new application for approval must be filed at the end of that period. Failure to meet the requirements of this section may result in withdrawal of approval.

(The information collection requirements contained in paragraphs (b)(3)(vi) and (4) were approved by the Office of Management and Budget under control number 1215-0121)

[40 FR 40801, Sept. 4, 1975; 40 FR 44130, Sept. 25, 1975; 47 FR 145, Jan. 5, 1982; 47 FR 28095, June 29, 1982, as amended at 49 FR 18294, Apr. 30, 1984]

§ 570.36 Certificates of age; effect.

The employment of any minor in any of the occupations to which this subpart is applicable, [illegible]onfined to

Appendix O: Employment at Subminimum Wages - Parts 519, 520, 521, 522, 523, 527

APPENDIX O

Employment of	Full-time Students	Part 519
	Student-Learners	Part 520
	Apprentices	Part 521
	Learners	Part 522
	Messengers	Part 523
	Student-Workers	Part 527

Under the Fair Labor Standards Act

REGULATIONS

Regulations, Part 519: Employment of Full-time Students at Subminimum Wages

Title 29, Part 519 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1223
Revised June 1985

432

DEPARTMENT OF LABOR UNITED STATES OF AMERICA

This publication conforms to the Code of Federal Regulations
as of June 11, 1985, the date this reprint was authorized.

PART 519—EMPLOYMENT OF FULL-TIME STUDENTS AT SUBMINIMUM WAGES

Subpart A—Retail or Service Establishments, and Agriculture

Sec.

519.1 Applicability of the regulations in this subpart.
519.2 Definitions.
519.3 Application for a full-time student certificate.
519.4 Procedure for action upon an application.
519.5 Conditions governing issuance of full-time student certificates.
519.6 Terms and conditions of employment under full-time student certificates and under temporary authorization.
519.7 Records to be kep:
519.8 Amendment or replacement of a full-time student certificate.
519.9 Reconsideration and review.
519.10 Amendment or revocation of the regulations in this subpart.

Subpart B—Institutions of Higher Education

Sec.

519.11 Applicability of the regulations in this subpart.
519.12 Definitions.
519.13 Application for a full-time student certificate.
519.14 Procedure for action upon an application.
519.15 Conditions governing issuance of full-time student certificates.
519.16 Terms and conditions of employment under full-time student certificates and under temporary authorization.
519.17 Records to be kept.
519.18 Amendment or replacement of a full-time student certificate.
519.19 Reconsideration and review.
519.20 Amendment or revocation of the regulations in this subpart.

AUTHORITY: Secs. 11 and 14, 52 Stat. 1068; sec. 11, 75 Stat. 74; secs. 501 and 602, 80 Stat. 843, 844 (29 U.S.C. 211, 214).

SOURCE: 40 FR 6329, Feb. 11, 1975, unless otherwise noted.

Subpart A—Retail or Service Establishments, and Agriculture

§ 519.1 Applicability of the regulations in this subpart.

(a) *Statutory provisions.* Under section 14 of the Fair Labor Standards Act of 1938, as amended, and the authority and responsibility delegated to him/her by the Secretary of Labor (36 FR 8755) and by the Assistant Secretary for Employment Standards (39 FR 33841) the Administrator of the Wage and Hour Division is authorized and directed, to the extent necessary in order to prevent curtailment of opportunities for employment, to provide by regulation or order for the employment, under certificates, of full-time students in retail or service establishments, or in agriculture. That section contains provisions requiring a wage rate in such certificates of not less than 85 percent of the minimum wage applicable under section 6 of the Act, limiting weekly hours of employment, stipulating compliance with the applicable child-labor standards, and safeguarding against the reduction of the full-time employment opportunities of employees other than full-time students employed under certificates.

(b) *Source of limitations.* Some of the limitations in this subpart are specifically required in section 14(b) of the Act. The other limitations implement the provisions in that section relating to employment opportunities, i.e., the "extent necessary to prevent curtailment of opportunities for employment" and the avoidance of a "substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized" under section 14(b) is applicable.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§ 519.2 Definitions.

(a) ***Full-time students.*** A "full-time student" for the purpose of this subpart is defined as a student who receives primarily daytime instruction at the physical location of a bona fide educational institution, in accordance with the institution's accepted definition of a full-time student. A full-time student retains that status during the student's Christmas, summer and other vacations. An individual who was such a student immediately prior to vacation will be presumed not to have discontinued such status during vacation if local law requires his/her attendance at the end of the vacation. In the absence of such requirement his/her status during vacation will be governed by his/her intention as last communicated to his/her employer. The phrase in section 14(b) of the statute "regardless of age but in compliance with applicable child-labor laws," among other things, restricts the employment in a retail or service establishment to full-time students who are at least 14 years of age because of the application of section 3(l) of the Act. There is a minimum age requirement of 16 years in agriculture for employment during school hours and in any occupation declared hazardous by the Secretary of Labor (Subpart E-1 of Part 570 of this Title.) In addition, there is a minimum age restriction of 14 years generally for employment in agriculture of a full-time student outside school hours for the school district where such employee is living while so employed, except (1) minors 12 or 13 years of age may be employed with written parental or guardian consent or they may work on farms where their parents or guardians are employed, and (2) minors under 12 may work on farms owned or operated by their parents or with parental or guardian consent on farms whose employees are exempt from section 6 by section 13 (a)(6)(A) of the Act.

(b) *Bona fide educational institution.* A "bona fide educational institution" is ordinarily an accredited institution. However, a school which is not accredited may be considered a "bona fide educational institution" in exceptional circumstances, such as when the school is too recently established to have received accreditation.

(c) *Retail or service establishment.* "Retail or service establishment" means a retail or service establishment as defined in section 13(a)(2) of the Fair Labor Standards Act. The statutory definition is interpreted in Part 779 of this chapter.

(d) *Agriculture.* "Agriculture" means agriculture as defined in section 3(f) of the Fair Labor Standards Act. The statutory definition is interpreted in Part 780 of this chapter.

(e) *Student hours of employment.* "Student hours of employment" means hours during which students are employed under full-time student certificates issued under this part and is distinguished from "hours of employment of students".

(f) ***Employer.*** Section 519.4 permits an agricultural or retail or service establishment employer to employ not more than six full-time students at subminimum wages on forwarding an application but before certification. For this purpose, the term "employer" looks to the highest structure of ownership or control, and hence may be more than a single retail or service establishment or farm, e.g., the controlling conglomerate or enterprise would be the "employer". With respect to public employers who operate retail or service establishments (see 29 CFR Part 779), the "employer" means the highest structure of control such as the State, municipality, county or other political subdivision.

[40 FR 6329, Feb. 11, 1975, as amended at 42 FR 58745, Nov. 11, 1977; 43 FR 29000, July 5, 1978]

§ 519.3 Application for a full-time student certificate.

(a) Whenever the employment of full-time students working outside of school hours in agriculture or in a retail or service establishment at wages lower than the minimum applicable under section 6 of the Fair Labor Standards Act is believed to be necessary to prevent curtailment of opportunities for employment and employment of them will not create a substantial probability of reducing the full-time employment opportunities of the other workers, an application for a certificate may be filed by their employer with the appropriate Regional Office of the Wage and Hour Division (or the Denver, Colorado Area Office for Colorado, North Dakota, and South Dakota; the Salt Lake City, Utah area Office for Montana, Utah, and Wyoming; and the Caribbean Office for the area it covers). Such application shall be signed by an authorized representative of the employer.

(b) The application must be filed in duplicate on official forms or exact copies thereof. The forms are available at the offices mentioned in paragraph (a) of this section. The application must contain the information as to the type of products sold or services rendered by the establishment, hours of employment during the preceding twelve-month period or data from previous certificates (or applications) as pertinent to the application, and other information for which request is made on the form.

(c) Separate application must be made for each farm or establishment in which authority to employ full-time students at subminimum wage rates is sought.

(d) Application for renewal of a certificate shall be made either on the same type of form as is used for a new application or on an alternate official form. No certificate in effect shall expire until action on such an application shall have been finally determined, provided that such application has been properly executed, and is received by the office specified in paragraph (a) of this section not less than 15 nor more than 30 days prior to the expiration date. A properly executed application is one which fully and accurately contains the information required on the form, and the required certification by an authorized representative of the employer.

§ 519.4 Procedure for action upon an application.

(a) Under certain conditions, an agricultural or retail or service establishment employer may obtain temporary authorization to employ full-time students at subminimum wages. These conditions are: (1) Attestation by the employer that he/she will employ no more than six full-time students at subminimum wages on any workday and that the employment of such students will not reduce the full-time employment opportunities of other persons, and (2) forwarding a properly completed application to the Wage and Hour Division not later than the start of such employment, and (3) posting a notice of such filing at the place(s) specified in paragraph (a) of § 519.6 of this subpart, and (4) compliance during the temporary authorization period with the requirements set forth in paragraphs (b) and (j) through (o) of § 519.6 of this subpart.

(b) Temporary authorization under the conditions set forth in paragraph (a) of this section is effective from the date the application is forwarded to the Wage and Hour Division in conformance with § 519.3 of this subpart. This authorization shall continue in effect for one year from the date of forwarding of the application unless, within 30 days the Administrator or his/her authorized representative denies the application, issues a certificate with modified terms and conditions, or expressly extends the 30-day period of review.

(c) Upon receipt of an application for a certificate, the officer authorized to act upon such application shall issue a certificate if the terms and conditions specified in this subpart are satisfied. To the extent he/she deems appropriate, the authorized officer may provide an opportunity to other interested persons to present data, views, or argument on the application prior to granting or denying a certificate.

(d) Until April 30, 1976, if a certificate is issued, there shall be published in the FEDERAL REGISTER a general statement of the terms of such certificate together with a notice that, pursuant to § 519.9, for 45 days following such publication any interested person may file a written request for reconsideration or review. Thereafter, applications and certificates will be available for examination in accordance with applicable regulations in Washington, D. C., and in the appropriate Regional Office of the Wage and Hour Division (or the Denver, Colorado Area Office for Colorado, North Dakota, and South Dakota; the Salt Lake City, Utah Area Office for Montana, Utah, and Wyoming; and the Caribbean Office for the area it covers) for establishments in its area. A period of 60 days will be provided after certificate issuance during which any interested person may file a written request for reconsideration or review.

(e) If a certificate is denied, notice of such denial shall be sent to the employer, stating the reason or reasons for the denial. Such denial shall be without prejudice to the filing of any subsequent application.

[40 FR 6329, Feb. 11, 1975, as amended at 42 FR 58745, Nov. 11, 1977]

§ 519.5 Conditions governing issuance of full-time student certificates.

Certificates authorizing the employment of full-time students at subminimum wage rates shall not be issued unless the following conditions are met:

(a) Full-time students are available for employment at subminimum rates; the granting of a certificate is necessary in order to prevent curtailment of opportunities for employment.

(b) The employment of more than six full-time students by an employer will not create a substantial probability of reducing the full-time employment opportunities for persons other than those employed under such certificates.

(c) Abnormal labor conditions such as a strike or lockout do not exist at the farm or establishment for which a full-time student certificate is requested.

(d) The data given on the application are accurate and based on available records.

(e) The farms or establishments on whose experience the applicant relies meet the requirements of paragraph (h) of § 519.6.

(f) There are no serious outstanding violations of the provisions of a full-time student certificate previously issued to the employer, nor have there been any serious violations of the Fair Labor Standards Act (including Child-Labor Regulation No. 3 and the Hazardous Occupations Orders published in Part 570 of this Chapter) which provide reasonable grounds to conclude that the terms of a certificate may not be compiled with, if issued.

(g) The subminimum wage rate(s) proposed to be paid full-time students under temporary authorization or under certificate is not less than 85 percent of the minimum wage applicable under section 6 of the Act.

(h) Certificates will not be issued where such issuance will result in a reduction of the wage rate paid to a current employee, including current student employees.

[40 FR 6329, Feb. 11, 1975, as amended at 42 FR 58745, Nov. 11, 1977]

§ 519.6 Terms and conditions of employment under full-time student certificates and under temporary authorization.

(a) A full-time student certificate will not be issued for a period longer than 1 year, nor will it be issued retroactively. It shall specify its effective and expiration dates. A copy of the certificate shall be posted during its effective period in a conspicuous place or places in the establishment or at the farm readily visable to all employees, for example, adjacent to the time clock or on the bulletin board used for notices to the employees. If temporary authorization is in effect under paragraph (a) of § 519.4 of this subpart, a notice thereof shall be similary posted during the effective period of such authorization.

(b) Full-time students may not be employed under a certificate at less than 85 percent of the minimum wage applicable under section 6 of the Act.

(c) For retail or service establishment employers or agricultural employers, the allowable extent of full-time student employment under certificates varies depending on whether: (1) The employer proposes to employ no more than six full-time students at subminimum wages on any workday, (2) the applicant requests authority for not more than 10 percent of the total hours of all employees during any month, or (3) the applicant requests authority for more than 10 percent of the total hours during any month. (For agricultural employers, the month of full-time student certificated employment may vary somewhat from the month in a previous year on which the certificate is based, depending on seasonal factors.)

(d) *Retail or service establishment employers or agricultural employers requesting authorization to employ not more than six full-time students at subminimum wages on any workday.* An application from such an applicant provides temporary authorization for the employment of full-time students at subminimum wages: *Provided,* The conditions set forth in paragraph (a) of § 519.4 of this subpart are met. Upon review of the application by the Administration or his/her authorized representative, the extent of the temporary authority may be modified.

(e) *Applicants requesting authorization for not more than 10 percent of the total hours of all employees during any month.* For such an applicant, certificates may authorize the employment of full-time student at subminimum wages for up to 10 percent of the total hours of all employees during any month, regardless of past practice of employing students. (Note: An establishment which has not previously held a certificate may be authorized 10 percent of the total hours of all employees during any month. Applicants requesting authority under this paragraph need not refer to paragraphs (f), (g), or (h) of this section.)

(f) *Applicants requesting authorization for more than 10 percent of the total monthly hours of all employees during any month with records of hours of employment of students and coverage by the Act prior to May 1974.* For such an applicant, certificates may not authorize full-time student employment at subminimum wages in excess of the highest ratio under any of these three formulas: (1) The proportion of student hours of employment (i.e., of full-time students under certificates) to total hours of all employees for the corresponding month of the preceding twelve-month period; (2) the maximum proportion of student hours of employment to total hours of all employees (in any corresponding month), applicable to the issuance of full-time student certificates before May 1974; or (3) 10 percent of the total hours of all employees, during any month. (Note: An establishment which is entitled to monthly allowances ranging from 5 to 20 percent may be authorized 10 percent for those months which were less than 10 percent and retain the higher allowances for those months above 10 percent.).

(g) *Applicants requesting authorization for more than 10 percent of the total hours of all employees during any month with records of hours of employment of students and new coverage under the 1974 Amendments.* For such an applicant, the highest permissible allowance under a certificate during any month is the highest ratio under any of these three formulas: (1) The proportion of hours of employment of full-time students to total hours of all employees during the corresponding month from May 1973 through April 1974; (2) the proportion of student hours of employment (i.e., of hours of full-time students under certificates) to total hours of all employees during the corresponding month of the preceding twelve-month period (an alternative which is not applicable to all months of the year until 12 months after May 1, 1974); or (3) 10 percent of the total hours of all employees. during any month. (See notes under paragraphs (e) and (f) of this section.)

(h) *Applicants requesting authorization for more than 10 percent of the total hours of all employees during any month without records of student hours worked.* For such an applicant, the permissible proportion under certificate of full-time student hours at subminimum wages to total hours of all employees is based on the "practice" during the preceding twelve-month period of: (1) Similar establishments of the same employer in the same general metropolitan areas in which such establishment is located; (2) similar establishments in the same or nearby communities if such establishment is not in a metropolitan area; or (3) other establishments of the same general character operating in the community or the nearest comparable community. ("Practice" means either the certificate allowances or the proportion between the actual student hours of employment to the total hours of all employees.)

(i) An overestimate of total hours of employment of all employees for a current month resulting in the employment of the full-time students in excess of the hours authorized in paragraph (e), (f), (g), or (h) of this section may be corrected by compensating them for the difference between the subminimum wages actually paid and the applicable minimum under section 6 of the Act for the excess hours. Similarly, if an agricultural employer or a retail or service establishment employer has authorization to employ no more than six full-time students at subminimum wages on any workday but exceeds that number, the excess may be corrected by compensating the additional full-time students for the difference between the subminimum wages actually paid and the applicable minimum under section 6 of the Act. This additional compensation shall be paid on the regular payday next after the end of the period.

(j) Full-time students shall not be permitted to work at subminimum wages for more than 8 hours a day, nor for more than 40 hours a week when school is not in session, nor more than 20 hours a week when school is in session (apart from a full-time student's summer vacation), except that when a full-day school holiday occurs on a day when the establishment is open for business, the weekly limitation on the maximum number of hours which may be worked shall be increased by 8 hours for each such holiday but in no event shall the 40-hour limitation be exceeded. (Note: School is considered to be in session for a student attending summer school.) Whenever a full-time student is employed for more than 20 hours in any workweek in conformance with this paragraph, the employer shall note in his/her payroll records that school was not in session during all or part of that workweek or the student was in his/her summer vacation.

(k) Neither oppressive child labor as defined in section 3(1) of the Act and regulations issued under the Act nor any other employment in violation of a Federal, State or local child labor law or ordinance shall come within the terms of any certificate issued under this subpart.

(l) Full-time students shall be employed at subminimum wages under this subpart only outside of their school hours, i.e., only outside of the scheduled hours of instruction of the individual student, or, in the case of agriculture, only outside of school hours for the school district where the employee is living while so employed, if the employee is under 16 years of age.

(m) No full-time student shall be hired under a full-time student certificate while abnormal labor conditions, such as a strike or lockout, exist at the establishment or farm.

(n) No provision of any full-time student certificate shall excuse noncompliance with higher standards applicable to full-time students which may be established under the Walsh-Healey Public Contracts Act or any other Federal law, State law, local ordinance, or union or other agreement. Thus, certificates issued under this law have no application to employment under the Service Contract Act.

(o) No full-time student certificate shall apply to any employee to whom a certificate issued under section 14 (a) or (c) of the Act has application.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975, as amended at 42 FR 58745, Nov. 11, 1977]

§ 519.7 Records to be kept.

(a) The employer shall designate each worker employed as a full-time student under a full-time student certificate at subminimum wages, as provided under Part 516 of this chapter.

(b) (1) In addition to the records required under Part 516 of this chapter and this subpart, the employer shall keep the records specified in paragraph (b) (2) and (3) of this section specifically relating to full-time students employed at subminimum wages.

(2) The employer shall obtain at the time of hiring and keep in his records information from the school attended that the employee receives primarily daytime instruction at the physical location of the school in accordance with the school's accepted definition of a full-time student. During a period between attendance at different schools not longer than the usual summer vacation, a certificate from the school next to be attended that the student has been accepted as a full-time student will satisfy the requirements of this paragraph (b)(2).

(3) The employer operating any farm or retail or service establishment shall maintain records of the monthly hours of employment of full-time students at subminimum wages and of the total hours of employment during the month of all employees in the establishment except for those employed in agriculture who come within one of the other exemptions from the minimum wage provisions of the Act.

(c) The records required in this section, including a copy of any full-time student certificate issued, shall be kept for a period of 3 years at the place and made available for inspection, both as provided in Part 516 of this chapter.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§ 519.8 Amendment or replacement of a full-time student certificate.

In the absence of an objection by the employer (which may be resolved in the manner provided in Part 528 of this chapter), the authorized officer upon his/her own motion may amend the provisions of a certificate when it is necessary by reason of the amendment of these regulations, or may withdraw a certificate and issue a replacement certificate when necessary to correct omissions or apparent defects in the original certificate.

§ 519.9 Reconsideration and review.

(a) Within 15 days after being informed of a denial of an application for a full-time student certificate or within 45 days after FEDERAL REGISTER publication of a statement of the terms of the certificate granted (subsequent to April 30, 1976, within 60 days after a certificate is granted), any person aggrieved by the action of an authorized officer in denying or granting a certificate may: (1) File a written request for reconsideration thereof by the authorized officer who made the decision in the first instance, or (2) file with the Administrator a written request for review.

(b) A request for reconsideration shall be accompanied by a statement of the additional evidence which the applicant believes may materially affect the decision and a showing that there were reasonable grounds for failure to present such evidence in the original proceedings.

(c) Any person aggrieved by the reconsideration determination of an authorized officer may, within 15 days after such determination, file with the Administrator a written request for review.

(d) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(e) If a request for reconsideration or review is granted, the authorized officer or the Administrator may, to the extent he/she deems it appropriate, afford other interested persons an opportunity to present data, views, or argument.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§ 519.10 Amendment or revocation of the regulations in this subpart.

The Administrator may at any time upon his/her motion or upon written request of any interested person or persons setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present data, views, or argument, amend or revoke any of the regulations of this subpart.

Subpart B—Institutions of Higher Education

§ 519.11 Applicability of the regulations in this subpart.

(a) *Statutory provisions.* Under section 14 of the Fair Labor Standards Act of 1938, as amended, and the authority and responsibility delegated to him/her by the Secetary of Labor (36 FR 8755) and by the Assistant Secretary for Employment Standards (39 FR 33841), the Administrator of the Wage and Hour Division is authorized and directed, to the extent necessary in order to prevent curtailment of opportunities for employment, to provide by regulation or order for the employment, under certificates, of full-time students in institutions of higher education. That section contains provisions requiring a wage rate in such certificates of not less than 85 percent of the minimum wage applicable under section 6 of the Act, limiting weekly hours of employment, stipulating compliance with the applicable child-labor standards, and safeguarding against the reduction of the full-time employment opportunities of employees other than full-time students employed under certificates.

(b) *Source of limitations.* Some of the limitations expressed in this subpart are specifically required in section 14(b) of the Act. The other limitations implement the provisions relating to employment opportunities, i.e., the "extent necessary in order to prevent curtailment of opportunities for employment" and the requirement that the regulations shall "prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by" section 14(b) of the Act is applicable.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§ 519.12 Definitions.

(a) *Full-time students.* A "full-time student" for the purpose of this subpart is defined as one who meets the accepted definition of a full-time student of the institution of higher education which employs him/her. A full-time student retains that status during the student's Christmas, summer and other vacations, even when a student is taking one or more courses during his/her summer or other vacation. The phrase in section 14(b) of the statute "regardless of age but in compliance with applicable child labor laws", among other things restricts the employment in an institution of higher education to full-time students who are at least 14 years of age because of the application of section 3(l) of the Act.

(b) *Institution of higher education.* An "institution of higher education" is an institution above the secondary level, such as a college or university, a junior college, or a professional school of engineering, law, library science, social work, etc. It is one that is recognized by a national accrediting agency or association as determined by the U.S. Commissioner of Education. Generally, an institution of higher education: (1) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; and (2) is legally authorized within a State to provide a program of education beyond high school; and (3) provides an educational program for which it normally awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semi-professional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§ 519.13 Application for a full-time student certificate.

(a) Whenever the employment of its full-time students working in an institution at wages lower than the minimum wage applicable under section 6 of the Fair Labor Standards Act is believed to be necessary to prevent curtailment of opportunities for employment and employment of them will not create a substantial probability of reducing the full-time employment opportunities of other workers, an application for a certificate may be filed by their employer with the appropriate Regional Office of the Wage and Hour Division (or the Denver, Colorado Area Office for Colorado, North Dakota and South Dakota; the Salt Lake City, Utah Area Office for Montana, Utah and Wyoming; and the Caribbean Office for the area it covers). Such an application shall be signed by an authorized representative of the employer.

(b) The application provided for under § 519.14 must be filed in duplicate on official forms or exact copies thereof. The forms are available at the offices mentioned in paragraph (a) of this section. The application must contain the information on numbers of full-time students and full-time employees (other than full-time students), minimum full-time student wages, and other information for which request is made on the form.

(c) Separate application must be made for each campus of an institution of higher education for which authority to employ full-time students at subminimum wage rates is sought.

(d) Application for renewal of a certificate shall be made on the same type of form as is used for a new application. No certificate in effect shall expire until action on such an application shall have been finally determined, provided that such application has been properly executed, and is received by the office specified in paragraph (a) of this section not less than 15 nor more than 30 days prior to the expiration date. A properly executed application is one which fully and accurately contains the information required on the form, and the required certification by an authorized representative of the employer.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§ 519.14 Procedure for action upon an application.

(a) Under certain conditions, an institution of higher education has temporary authorization to employ full-time students at subminimum wages. These conditions are: (1) Absence of an effective finding by the Secretary that the institution has been employing full-time students under certificates in violation of the requirements of section 14(b)(3) of the Act or of these regulations; and (2) forwarding of a properly completed application to the Wage and Hour Division not later than the start of employment of full-time students at subminimum wages; and (3) posting a notice of such filing at the place(s) specified in paragraph (a) of § 519.16 of this subpart; and (4) compliance during the temporary authorization period with the requirements set forth in paragraphs (b) and (e) through (j) of § 519.16 of this subpart.

(b) Temporary authorization under the conditions set forth in paragraph (a) of this section is effective from the date the application is forwarded to the Wage and Hour Division in conformance with § 519.13 of this subpart. This authorization shall continue in effect for one year from the date of forwarding of the application unless, within 30 days, the Administrator or his/her authorized representative denies the application, issues a certificate with modified terms and conditions, or expressly extends the 30-day period of review.

(c) Upon receipt of an application for a certificate, the officer authorized to act upon such application shall issue a certificate if the terms and conditions specified in this subpart are satisfied. To the extent he/she deems appropriate, the authorized officer may provide an opportunity to other interested persons to present data, views, or argument on the application prior to granting or denying a certificate.

(d) Until April 30, 1976, if a certificate is issued there shall be published in the FEDERAL REGISTER a general statement of the terms of such certificate together with a notice that, pursuant to § 519.19, for 45 days following such publication any interested person may file a written request for reconsideration or review. Thereafter, applications and certificates will be available for examination in accordance with applicable regulations in Washington, D.C., and in the appropriate Regional Office of the Wage and Hour Division (or the Denver, Colorado Area Office for Colorado, North Dakota, and South Dakota; the Salt Lake City, Utah Area Office for Montana, Utah, and Wyoming; and the Caribbean Office for the area it covers) for institutions of higher education in its area. A period of 60 days will be provided after certificate issuance during which any interested person may file a written request for reconsideration or review.

(e) If a certificate is denied, notice of such denial shall be sent to the employer, stating the reason or reasons for the denial. Such d[illegible]ial shall be without prejudice to t[illegible]ling of any subsequent application[illegible]

§ 519.15 Conditions governing issuance of full-time student certificates.

Certificates authorizing the employment of full-time students at subminimum wage rates shall not be issued unless the following conditions are met:

(a) Full-time students are available for employment at subminimum rates; the granting of a certificate is necessary in order to prevent curtailment of opportunities for employment.

(b) The employment of full-time students will not create a substantial probability of reducing the full-time employment opportunities for persons other than those employed under such certificates.

(c) Abnormal labor conditions such as a strike or lockout do not exist in the units of the campus for which a full-time student certificate is requested.

(d) The data given on the application are accurate and based on available records.

(e) There are no serious outstanding violations of the provisions of a full-time student certificate previously issued to the employer, nor have there been any serious violations of the Fair Labor Standards Act (including Child-Labor Regulation No. 3 and the Hazardous Occupations Orders published in Part 570 of this chapter) which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

(f) The subminimum wage rate(s) proposed to be paid full-time students under temporary authorization or under certificate is not less than 85 percent of the minimum wage applicable under section 6 of the Act.

(g) Full-time students are not to be employed by an institution of higher education at subminimum wages under this subpart in unrelated trades or businesses as defined and applied under sections 511 through 515 of the Internal Revenue Code, such as apartment houses, stores, or other businesses not primarily catering to the students of the institution.

(h) Certificates will not be issued where such issuance will result in a reduction of the wage rate paid to a current employee, including current student employees.

§ 519.16 Terms and conditions of employment under full-time student certificates and under temporary authorization.

(a) A full-time student certificate will not be issued for a period longer than 1 year, nor will it be issued retroactively. It shall specify its effective and expiration dates. A copy of the certificate shall be posted during its effective period in a conspicuous place or places in the institution of higher education readily visible to all employees, for example, adjacent to the time clock or on the bulletin board used for notices to the employees. If temporary authorization is in effect under paragraph (a) of § 519.14, a notice thereof shall be similarly posted during the effective period of such authorization.

(b) Full-time students may not be employed under a certificate at less than 85 percent of the minimum wage applicable under section 6 of the Act.

(c) An institution of higher education shall not employ full-time students at subminimum wages under this subpart in unrelated trades or businesses as defined and applied under sections 511 through 515 of the Internal Revenue Code, such as apartment houses, stores, or other businesses not primarily catering to the students of the institution.

(d) An institution of higher education subject to a finding by the Secretary that it is in violation of the requirements of section 14(b)(3) of the Act or of this subpart must be issued a full-time student certificate before it can employ full-time students at wages below those required by section 6 of the Act. The Administrator or his/her authorized representative will not issue a full-time student certificate to such an institution without adequate assurances and safeguards to insure that the violations found by the Secretary will not continue.

(e) Full-time students shall not be permitted to work at subminimum wages for more than 8 hours a day, nor for more than 40 hours a week when school is not in session, nor more than 20 hours a week when school is in session (apart from a full-time student's summer vacation), except that when a full-day school holiday occurs the weekly limitation on the maximum hours which may be worked shall be increased by 8 hours for each such holiday but in no event shall the 40-hour limitation be exceeded. (Note: School is considered to be in session for a student taking one or more courses during a summer or other vacation.)

Whenever a full-time student is employed for more than 20 hours in any workweek in conformance with this paragraph, the employer shall note in his/her payroll that school was not in session during all or part of that workweek or the student was in his/her summer vacation.

(f) Neither oppressive child labor as defined in section 3(l) of the Act and regulations issued under the Act nor any other employment in violation of a Federal, State or local child labor law or ordinance shall come within the terms of any certificate issued under this subpart.

(g) Full-time students shall be employed at subminimum wages under this subpart only outside of their school hours, i.e., only outside of the scheduled hours of instruction of the individual full-time student.

(h) No full-time student shall be hired under a full-time student certificate for work in a unit or units of the campus where abnormal labor conditions, such as a strike or lockout, exist.

(i) No provision of any full-time student certificate shall excuse noncompliance with higher standards applicable to full-time students which may be established under the Walsh-Healey Public Contracts Act or any other Federal law, State law, local ordinance, or union or other agreement. Thus, certificates issued under this subpart have no application to employment under the Service Contract Act.

(j) No full-time student certificate shall apply to any employee to whom a certificate issued under section 14(a) or (c) of the Act has application.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§ 519.17 Records to be kept.

(a) The employer shall designate each worker employed as a full-time student under a full-time student certificate at subminimum wages, as provided under Part 516 of this chapter.

(b) (1) In addition to the records required under Part 516 of this chapter and this subpart, the employer shall keep the records specified in paragraphs (b) (2) and (3) of this section specifically relating to full-time students employed at subminimum wages.

(2) The institution shall obtain at the time of hiring and keep in its records information that the employee is its full-time student at the physical location of the institution in accordance with its accepted definition of a full-time student. During a period between attendance at different schools not longer than the usual summer vacation, the acceptance by the institution of the full-time student for its next term will satisfy the requirements of (b)(2) of this section.

(3) An institution of higher education shall maintain records showing the total number of all full-time students of the type defined in § 519.12(a) employed at the campus of the institution at less than the minimum wage otherwise applicable under the Act, and the total number of all employees at the campus to whom the minimum wage provision of the Act applies.

(c) The records required in this section, including a copy of any full-time student certificate issued, shall be kept for a period of 3 years at the place and made available for inspection, both as provided in Part 516 of this chapter.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§ 519.18 Amendment or replacement of a full-time student certificate.

In the absence of an objection by the employer (which may be resolved in the manner provided in Part 528 of this chapter) the authorized officer upon his/her own motion may amend the provisions of a certificate when it is necessary by reason of the amendment of these regulations, or may withdraw a certificate and issue a replacement certificate when necessary to correct omissions or apparent defects in the original certificates.

§ 519.19 Reconsideration and review.

(a) Within 15 days after being informed of a denial of an application for a full-time student certificate or within 45 days after FEDERAL REGISTER publication of a statement of the terms of the certificate granted, (subsequent to April 30, 1976, within 60 days after a certificate is granted), any person aggrieved by the action of an authorized officer in denying or granting a certificate may: (1) File a written request for reconsideration thereof by the authorized officer who made the decision in the first instance, or (2) file with the Administrator a written request for review.

(b) A request for reconsideration shall be accompanied by a statement of the additional evidence which the applicant believes may materially affect the decision and a showing that there were reasonable grounds for failure to present such evidence in the original proceedings.

(c) Any person aggrieved by the reconsideration of an authorized officer may, within 15 days after such determination, file with the Administrator a written request for review.

(d) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(e) If a request for reconsideration or review is granted, the authorized officer or the Administrator may, to the extent he/she deems it appropriate, afford other interested persons an opportunity to present data, views, or argument.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§ 519.20 Amendment or revocation of the regulations in this subpart.

The Administrator may at any time upon his/her own motion or upon written request of any interested person or persons setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present data, views, or argument, amend or revoke any of the regulations of this subpart.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1985-491-543/46209

Regulations, Part 520: Employment of Student-Learners

Title 29, Part 520 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1343
(Revised September 1980)

This publication conforms to the Code of Federal Regulations as of August 15, 1980, the date this reprint was authorized.

U.S. Department of Labor
Employment Standards Administration
Washington, D.C. 20210

PART 520—EMPLOYMENT OF STUDENT LEARNERS

Sec.
520.1 Applicability of the regulations contained in this part.
520.2 Definitions.
520.3 Application for a special student-learner certificate.
520.4 Procedure for action upon application.
520.5 Conditions necessary for favorable review.
520.6 Terms and conditions of employment under special student-learner certificates.
520.7 Employment records to be kept.
520.8 Duration of certificates.
520.9 Compliance with established standards.
520.10 Reconsideration and review.
520.11 Amendment to the regulations in this part.

AUTHORITY: Sec. 14, 52 Stat. 1068, as amended; 29 U.S.C. 214.

§ 520.1 Applicability of the regulations contained in this part.

The regulations contained in this part are issued in accordance with section 14 of the Fair Labor Standards Act of 1938, as amended, to provide for the employment under special certificates of student-learners at wages lower than the minimum wage applicable under section 6 of the act. Such certificates shall be subject to the terms and conditions hereinafter set forth.

[18 FR 3290, June 10, 1953]

§ 520.2 Definitions.

As used in the regulations contained in this part:

(a) A "student-learner" is a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a bona fide vocational training program.

(b) A "bona fide vocational training program" is one authorized and approved by a State board of vocational education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the work day or work week, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student-learner's course by an accredited school, college, or university.

[18 FR 3290, June 10, 1953]

§ 520.3 Application for a special student-learner certificate.

(a) Whenever the employment of a student-learner at wages lower than the minimum wage applicable under section 6 of the Fair Labor Standards Act of 1938, as amended, is believed necessary to prevent curtailment of opportunities for employment, an application for a special certificate authorizing the employment of such student-learner at subminimum wages shall be filed in duplicate by the employer with the authorized representative of the Administrator at the appropriate Regional or Caribbean Office of the Wage and Hour Division, U.S. Department of Labor.

(b) Application must be made on the official form furnished by the Division and must be signed by the employer, the appropriate school official and the student-learner. The application must contain all information required by such form, including among other things, a statement clearly outlining the vocational training program and showing, particularly, the processes in which the student-learner will be engaged when in training on the job; a statement clearly outlining the school instruction directly related to the job; the total number of workers employed in the establishment; the number and hourly wage rate of experienced workers employed in the occupation in which the student-learner is to be trained; the hourly wage rate or progressive wage schedule which the employer proposes to pay the student-learner; data regarding the age of the student-learner; the period of employment training at subminimum wages; the number of hours of employment training a week; the number of hours of school instruction a week; and a certification by the appropriate school official that the student named therein will be receiving instruction in an accredited school, college or university and will be employed pursuant to a bona fide vocational training program, as defined in § 520.2(b).

(c) The certification by the appropriate school official must satisfy the following conditions:

(1) The application must be properly executed in conformance with § 520.3.

(2) The employment training must conform with the provisions of §§ 520.5 (a), (c), (d), and (g) and paragraphs (a) and (c) of § 520.6.

(3) The occupation must not be one for which a student-learner application was previously submitted by the employer and a special certificate was denied by the Administrator or his authorized representative.

[35 FR 13884, Sept. 2, 1970]

§ 520.4 Procedure for action upon application.

(a) The certification by the appropriate school official on an application for a special student-learner certificate authorizing the employment of a student-learner at subminimum wages (see § 520.3(b)) shall constitute a temporary authorization for the employment of a student-learner at wages lower than the minimum wage applicable under section 6 of the act, effective from the date such application is forwarded to the Division in conformance with § 520.3 and, at the end of 30 days, shall become the permanent special student-learner certificate unless, after review, the Administrator or his authorized representative denies the application, issues a certificate with modified terms and conditions, or expressly extends the period of review.

(b) Upon receipt of an application for the employment of a student-learner, the Administrator or his authorized representative shall review the application for compliance with this part. If an application is to be denied, notification of denial should be made to the appropriate school official, the employer, and the student within the 30 days following the date such application was forwarded to the Division, unless additional time for review is considered necessary or appropriate, and in which case the appropriate school offical, the employer, and the student shall be so notified. To the extent feasible, the Administrator or his authorized representative shall provide an opportunity to other interested persons to present data and views on the application before denying a special student-learner certificate.

(c) Whenever a notification of denial is mailed to the employer, such denial shall be without prejudice to any subsequent application, except under the circumstances referred to in § 520.3(c)(3). Two copies of the notification of denial shall be mailed to the appropriate school official, one of which shall be retained for his records and the other shall be presented to the student-learner.

[35 FR 13884, Sept. 2, 1970]

§ 520.5 Conditions necessary for favorable review.

The following conditions must be satisfied before a special certificate may be issued authorizing the employment of a student-learner at subminimum wages:

(a) Any training program under which the student-learner will be employed must be a bona fide vocational training program as defined in § 520.2;

(b) The employment of the student-learner at subminimum wages authorized by the special certificate must be necessary to prevent curtailment of opportunities for employment;

(c) The student-learner must be at least sixteen years of age (or older) as may be required pursuant to paragraph (d) of this section;

(d) The student-learner must be at least 18 years of age if he is to be employed in any activity prohibited by virtue of a hazardous occupation order of the Secretary of Labor (See Part 570, Subpart E, of this chapter, but note the specific exemptions for student-learners in several of the orders).

(e) The occupation for which the student-learner is receiving preparatory training must require a sufficient degree of skill to necessitate a substantial learning period;

(f) The training must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations;

(g) The employment of a student-learner must not have the effect of displacing a worker employed in the establishment;

(h) The employment of the student-learners at subminimum wages must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character;

(i) The occupational needs of the community or industry warrant the training of student-learners;

(j) There are no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or serious violations of any other provisions of the Fair Labor Standards Act of 1938, as amended, by the employer which provide reasonable grounds to conclude that the terms of the certificate would not be complied with, if issued;

(k) The issuance of such a certificate would not tend to prevent the development of apprenticeship in accordance with the regulations applicable thereto (Part 521 of this chapter) or would not impair established apprenticeship standards in the occupation or industry involved;

(l) The number of student-learners to be employed in one establishment must not be more than a small proportion of its working force.

[18 FR 3290, June 10, 1953, as amended at 21 FR 1349, Mar. 1, 1956; 26 FR 8009, Aug. 26, 1961; 35 FR 13884, Sept. 2, 1970]

§ 520.6 Terms and conditions of employment under special student-learner certificates.

(a) The special minimum wage rate shall be not less than 75 percent of the applicable minimum under section 6 of the act.

(b) No special student-learner certificate may be issued retroactively.

(c) (1) The number of hours of employment training each week at subminimum wages pursuant to a certificate, when added to the hours of school instruction, shall not exceed 40 hours, except that authorization may be granted by the Administrator or his authorized representative for a greater number of hours if found to be justified by extraordinary circumstances.

(2) When school is not in session on any school day, the student-learner may work a number of hours in addition to the weekly hours of employment training authorized by the certificate: *Provided, however,* That the total hours worked shall not exceed 8 hours on any such day. A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked on such day.

(3) During the school term, when school is not in session for the entire week, the student-learner may work at his employment training a number of hours in the week in addition to those authorized by the certificate: *Provided, however,* That the total hours shall not exceed 40 hours in any such week. A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked in such week.

(d) A special student-learner certificate shall not constitute authorization to pay a subminimum wage rate to a student-learner in any week in which he is employed for a number of hours in addition to the number authorized in the certificate, except as provided in paragraphs (c)(1), (2), and (3) of this section.

[35 FR 13884, Sept. 2, 1970]

§ 520.7 Employment records to be kept.

In addition to any other records required under the record-keeping regulations (Part 516 of this chapter) the employer shall keep the following records specifically relating to student-learners employed at subminimum wage rates:

(a) Any worker employed as a student-learner shall be identified as such on the payroll records, with each student-learner's occupation and rate of pay being shown;

(b) The employer's copy of the application, filed in accordance with § 520.4(a) and any certificate issued by the Administrator or his authorized representative must be available at all times for inspection for a period of 3 years from the last date of employment of the student-learner.

(c) Notations should be made in the employer's records when additional hours are worked by reason of school not being in session as provided in §§ 520.6(c) (2) and (3).

[18 FR 3291, June 10, 1953, as amended at 35 FR 13884, Sept. 2, 1970]

§ 520.8 Duration of certificates.

A special student-learner certificate shall be effective for a period not to exceed the length of 1 school year unless a longer period is found to be justified by extraordinary circumstances. No certificate shall authorize employment training beyond the date of graduation.

[35 FR 13885, Sept. 2, 1970]

§ 520.9 Compliance with established standards.

No provision of the regulations contained in this part, or of any certificate or temporary authority thereunder, shall excuse noncompliance with higher standards applicable to student-learners which may be established under any other Federal law, or any State law, municipal ordinance or trade union agreement.

[35 FR 13885, Sept. 2, 1970]

§ 520.10 Reconsideration and review.

(a) Any person aggrieved by the action of an authorized representative of the Administrator in denying or granting a special student-learner certificate may within 15 days after such action, (1) file a written request for reconsideration thereof by the authorized representative of the Administrator who made the decision in the first instance, or (2) file a written request for review of the decision by the Administrator or an authorized representative who has taken no part in the action which is the subject of review.

(b) A request for reconsideration shall be accompanied by a statement of the additional evidence which the applicant believes may materially affect the decision and a showing that there were reasonable grounds for failure to present such evidence in the original proceedings.

(c) Any person aggrieved by the reconsidered determination of an authorized representative of the Administrator may, within 15 days after such determination, file a written request for review.

(d) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(e) If a request for reconsideration or review is granted, the Administrator or his authorized representative may, to the extent he deems it appropriate, afford other interested persons an opportunity to present data and views.

[18 FR 3291, June 10, 1953, as amended at 21 FR 1349, Mar. 1, 1956; 22 FR 5683, July 18, 1957; 24 FR 204, Jan. 8, 1959]

§ 520.11 Amendment to the regulations in this part.

The Administrator may at any time upon his own motion or upon written request of any interested person setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations contained in this part.

[18 FR 3292, June 10, 1953]

(g) The employment of a student-learner must not have the effect of displacing a worker employed in the establishment;

(h) The employment of the student-learners at subminimum wages must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character;

(i) The occupational needs of the community or industry warrant the training of student-learners;

(j) There are no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or serious violations of any other provisions of the Fair Labor Standards Act of 1938, as amended, by the employer which provide reasonable grounds to conclude that the terms of the certificate would not be complied with, if issued;

(k) The issuance of such a certificate would not tend to prevent the development of apprenticeship in accordance with the regulations applicable thereto (Part 521 of this chapter) or would not impair established apprenticeship standards in the occupation or industry involved;

(l) The number of student-learners to be employed in one establishment must not be more than a small proportion of its working force.

[18 FR 3290, June 10, 1953, as amended at 21 FR 1349, Mar. 1, 1956; 26 FR 8009, Aug. 26, 1961; 35 FR 13884, Sept. 2, 1970]

§ 520.6 Terms and conditions of employment under special student-learner certificates.

(a) The special minimum wage rate shall be not less than 75 percent of the applicable minimum under section 6 of the act.

(b) No special student-learner certificate may be issued retroactively.

(c) (1) The number of hours of employment training each week at subminimum wages pursuant to a certificate, when added to the hours of school instruction, shall not exceed 40 hours, except that authorization may be granted by the Administrator or his authorized representative for a greater number of hours if found to be justified by extraordinary circumstances.

(2) When school is not in session on any school day, the student-learner may work a number of hours in addition to the weekly hours of employment training authorized by the certificate: *Provided, however,* That the total hours worked shall not exceed 8 hours on any such day. A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked on such day.

(3) During the school term, when school is not in session for the entire week, the student-learner may work at his employment training a number of hours in the week in addition to those authorized by the certificate: *Provided, however,* That the total hours shall not exceed 40 hours in any such week. A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked in such week.

(d) A special student-learner certificate shall not constitute authorization to pay a subminimum wage rate to a student-learner in any week in which he is employed for a number of hours in addition to the number authorized in the certificate, except as provided in paragraphs (c)(1), (2), and (3) of this section.

[35 FR 13884, Sept. 2, 1970]

§ 520.7 Employment records to be kept.

In addition to any other records required under the record-keeping regulations (Part 516 of this chapter) the employer shall keep the following records specifically relating to student-learners employed at subminimum wage rates:

(a) Any worker employed as a student-learner shall be identified as such on the payroll records, with each student-learner's occupation and rate of pay being shown;

(b) The employer's copy of the application, filed in accordance with § 520.4(a) and any certificate issued by the Administrator or his authorized representative must be available at all times for inspection for a period of 3 years from the last date of employment of the student-learner.

(c) Notations should be made in the employer's records when additional hours are worked by reason of school not being in session as provided in §§ 520.6(c)(2) and (3).

[18 FR 3291, June 10, 1953, as amended at 35 FR 13884, Sept. 2, 1970]

§ 520.8 Duration of certificates.

A special student-learner certificate shall be effective for a period not to exceed the length of 1 school year unless a longer period is found to be justified by extraordinary circumstances. No certificate shall authorize employment training beyond the date of graduation.

[35 FR 13885, Sept. 2, 1970]

§ 520.9 Compliance with established standards.

No provision of the regulations contained in this part, or of any certificate or temporary authority thereunder, shall excuse noncompliance with higher standards applicable to student-learners which may be established under any other Federal law, or any State law, municipal ordinance or trade union agreement.

[35 FR 13885, Sept. 2, 1970]

§ 520.10 Reconsideration and review.

(a) Any person aggrieved by the action of an authorized representative of the Administrator in denying or granting a special student-learner certificate may within 15 days after such action, (1) file a written request for reconsideration thereof by the authorized representative of the Administrator who made the decision in the first instance, or (2) file a written request for review of the decision by the Administrator or an authorized representative who has taken no part in the action which is the subject of review.

(b) A request for reconsideration shall be accompanied by a statement of the additional evidence which the applicant believes may materially affect the decision and a showing that there were reasonable grounds for failure to present such evidence in the original proceedings.

(c) Any person aggrieved by the reconsidered determination of an authorized representative of the Administrator may, within 15 days after such determination, file a written request for review.

(d) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(e) If a request for reconsideration or review is granted, the Administrator or his authorized representative may, to the extent he deems it appropriate, afford other interested persons an opportunity to present data and views.

[18 FR 3291, June 10, 1953, as amended at 21 FR 1349, Mar. 1, 1956; 22 FR 5683, July 18, 1957; 24 FR 204, Jan. 8, 1959]

§ 520.11 Amendment to the regulations in this part.

The Administrator may at any time upon his own motion or upon written request of any interested person setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations contained in this part.

[18 FR 3292, June 10, 1953]

3291, June 10, 1953, as amended at
884, Sept. 2, 1970]

Duration of certificates.

cial student-learner certificate
e effective for a period not to
the length of 1 school year
a longer period is found to be
d by extraordinary circum-
. No certificate shall authorize
ment training beyond the date
uation.

.3885, Sept. 2, 1970]

Compliance with established stand-
s.

rovision of the regulations con-
in this part, or of any certifi-
temporary authority thereun-
all excuse noncompliance with
standards applicable to stu-
arners which may be estab-
under any other Federal law, or
ate law, municipal ordinance or
nion agreement.

13885, Sept. 2, 1970]

nsideration and review.

Any person aggrieved by the
of an authorized representative
Administrator in denying or
ig a special student-learner cer-
may within 15 days after such
(1) file a written request for re-
eration thereof by the author-
presentative of the Administra-
o made the decision in the first
e, or (2) file a written request
iew of the decision by the Ad-
ator or an authorized repre-
ve who has taken no part in the
which is the subject of review.

A request for reconsideration
e accompanied by a statement
additional evidence which the
int believes may materially
the decision and a showing that
were reasonable grounds for fail-
present such evidence in the
l proceedings.

ny person aggrieved by the re-
ered determination of an au-
ed representative of the Admin-
r may, within 15 days after such
ination, file a written request
iew.

(d) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(e) If a request for reconsideration or review is granted, the Administrator or his authorized representative may, to the extent he deems it appropriate, afford other interested persons an opportunity to present data and views.

[18 FR 3291, June 10, 1953, as amended at 21 FR 1349, Mar. 1, 1956; 22 FR 5683, July 18, 1957; 24 FR 204, Jan. 8, 1959]

§ 520.11 Amendment to the regulations in this part.

The Administrator may at any time upon his own motion or upon written request of any interested person setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations contained in this part.

[18 FR 3292, June 10, 1953]

PART 521—EMPLOYMENT OF APPRENTICES

Sec.

521.1 Employment of apprentices at subminimum wages.
521.2 Definitions.
521.3 Standards of apprenticeship.
521.4 Criteria for a skilled trade.
521.5 Procedure for employment of an apprentice at subminimum wages.
521.6 Issuance of special certificates.
521.7 Terms of special certificates.
521.8 Records.
521.9 Amendment of this part.
521.10 Investigations and hearings.
521.11 Reconsideration and review.

AUTHORITY: Sec. 14, 52 Stat. 1068, as amended; 29 U.S.C. 214, unless otherwise noted.

SOURCE: 16 FR 8884, Sept. 1, 1951, unless otherwise noted.

§ 521.1 Employment of apprentices at subminimum wages.

The Administrator or his authorized representative, to the extent necessary in order to prevent curtailment of opportunities for employment, shall issue special certificates to employers or joint apprenticeship committees[1] authorizing the employment of apprentices in skilled trades at wages lower than the minimum wage applicable under section 6 of the Fair Labor Standards Act of 1938, as amended, subject to the conditions and limitations prescribed in this part.

§ 521.2 Definitions.

As used in this part:

(a) *Apprentice* means a worker at least sixteen years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade as defined in § 521.4, and in conformity with or substantial conformity with the standards of apprenticeship as set forth in § 521.3.

(b) *Apprenticeship agreement* means a written agreement between an apprentice and either his employer or a joint apprenticeship committee, which contains the terms and conditions of the employment and training of the apprentice, and which conforms or substantially conforms with the standards of apprenticeship set forth in § 521.3.

(c) *Apprenticeship program* means a complete plan of terms and conditions for the employment and training of apprentices which conforms or substantially conforms with the standards of apprenticeship, as set forth in § 521.3.

(d) *Joint apprenticeship committee* means a local committee, equally representative of employers and employees, which has been established by a group of employers and a bona fide bargaining agent or agents, to direct the training of apprentices with whom it has made agreements. This term does not include a joint apprenticeship

---

[1] An individual employer participating in an apprenticeship program under the control and supervision of a joint apprenticeship committee may employ an apprentice under a temporary or special certificate issued to or held by such joint apprenticeship committee. However, it is the responsibility of the employer, and not of the joint apprenticeship committee, that such employment be in compliance with the regulations and with the certificate.

BEST COPY AVAILABLE

committee established for an individual plant.

(e) *Recognized apprenticeship agency* means either (1) a state apprenticeship agency recognized by the Bureau of Apprenticeship, United States Department of Labor, or (2) if no such apprenticeship agency exists in the state, the Bureau of Apprenticeship, United States Department of Labor.

(f) *Registration* means the approval by a recognized apprenticeship agency of an apprenticeship program or agreement as meeting the basic standards adopted by the Bureau of Apprenticeship, United States Department of Labor, upon the recommendation of the Federal Committee on Apprenticeship.

(g) *State* means any state of the United States or the District of Columbia or any territory or possession of the United States.

§ 521.3 Standards of apprenticeship.

An apprenticeship program must conform with or substantially conform with the following standards of apprenticeship before the Administrator or his authorized representative will issue a special certificate authorizing employment of an apprentice under such program at wages lower than the minimum wages applicable under section 6 of the act:

(a) Employment and training of the apprentice in a skilled trade. A skilled trade is an apprenticeable occupation which satisfies the criteria set forth in § 521.4.

(b) One year or more (2,000 or more hours) of work experience.

(c) A progressively increasing schedule of wages to be paid the apprentice which averages at least 50 percent of the journeyman's rate over the period of apprenticeship.

(d) A schedule of work processes or operations in which experience is to be given the apprentice on the job.

(e) Submission of the apprenticeship program and the apprenticeship agreement to the recognized apprenticeship agency for registration as provided in § 521.5.

(f) Joint agreement to the apprenticeship program by the employer and the bona fide bargaining agent, where a bargaining agent exists.

(g) An indication that the number of apprentices to be employed conforms to the needs and practices in the community.

(h) Adequate facilities for training and supervision of the apprentice and the keeping of appropriate records concerning his progress.

(i) Related instruction, if available, (144 hours a year is normally considered necessary. Related instruction means an organized and systematic form of instruction which is designed to provide the apprentice with knowledge of the theoretical and technical subjects related to his trade. Such instruction may be given in a classroom, through correspondence courses, or other forms of self-study.)

(Sec. 11, 52 Stat. 1068; sec. 11, 75 Stat. 74; secs. 501, 602, 80 Stat. 843, 844 (29 U.S.C. 211))

[16 FR 8884, Sept. 1, 1951, as amended at 43 FR 12311, Mar. 24, 1978]

§ 521.4 Criteria for a skilled trade.

A skilled trade is an apprenticeable occupation which possesses all of the following characteristics:

(a) Is customarily learned in a practical way through training and work experience on the job.

(b) Is clearly identified and commonly recognized throughout an industry.

(c) Requires one year or more (2,000 or more hours) of work experience to learn.

(d) Requires related instruction to supplement the work experience (which instruction may be provided in accordance with § 521.3(i)).

(e) Is not merely a part of an apprenticeable occupation.

(f) Involves the development of skill sufficiently broad to be applicable in like occupations throughout an industry, rather than of restricted application to the products of any one company.

(g) Does not fall into any of the following categories:

(1) Selling, retailing, or similar occupations in the distributive field.

(2) Managerial occupations.

(3) Clerical occupations.

(4) Professional and semi-professional occupations (this category covers occupations for which entrance requirements customarily include education of college level).

(Sec. 11, 52 Stat. 1068; sec. 11, 75 Stat. 74; secs. 501, 602, 80 Stat. 843, 844 (29 U.S.C. 211))

[16 FR 8884, Sept. 1, 1951, as amended at 43 FR 12311, Mar. 24, 1978]

§ 521.5 Procedure for employment of an apprentice at subminimum wages.

(a) Before an apprentice may be employed at subminimum wages, the employer or joint apprenticeship committee shall submit or shall have submitted an apprenticeship program to the appropriate recognized apprenticeship agency for registration.

(b) An apprenticeship program which has been registered with a recognized apprenticeship agency shall constitute a temporary special certificate authorizing the employment of an apprentice at the wages and under the conditions specified in such program until a special certificate is issued or denied. This temporary authorization is, however, conditioned on the requirement that within 90 days from the beginning date of employment of the apprentice, the employer or the joint apprenticeship committee shall satisfy all the following requirements: (1) Enter into an apprenticeship agreement with each apprentice, (2) submit the agreement to the recognized apprenticeship agency for registration, and (3) send one true copy of the apprenticeship agreement, with evidence of registration, to the appropriate Regional Office of the Wage and Hour Division, United States Department of Labor: *Provided, however,* That the Administrator or his authorized representative has not previously notified the employer or joint apprenticeship committee of disapproval of a registered apprenticeship agreement for the same or similar trade or trades as not conforming or substantially conforming with the standards of apprenticeship set forth in § 521.3.

(c) If the agreement submitted to the Wage and Hour Division has not been registered, it should be accompanied by an explanation of the efforts made to have the agreement registered and the reasons, if any, given by the recognized apprenticeship agency for not registering it.

[16 FR 8884, Sept. 1, 1951, as amended at 17 FR 1995, Mar. 7, 1952; 23 FR 5215, July 9, 1958]

§ 521.6 Issuance of special certificates.

(a) If the apprenticeship agreement and other available information indicate that the requirements of § 521.3 and the other requirements of this part are satisfied the Administrator or his authorized representative shall issue a special certificate in accordance with § 521.1. Otherwise he shall deny the special certificates.

(b) The special certificate, if issued, shall be mailed to the employer or the joint apprenticeship committee and a copy shall be mailed to the apprentice. If a special certificate is denied, the employer or the joint apprenticeship committee, the apprentice and the recognized apprenticeship agency shall be given written notice of the denial. The employer shall pay the apprentice the minimum wage applicable under section 6 of the Act from the date of receipt of notice of such denial.

(c) A special certificate will not be issued where there are serious outstanding violations involving the employee whom an apprentice certificate is being requested, or where there are any serious outstanding violations of a certificate previously issued, or where there have been any serious violations of the Act which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

[20 FR 5972, Aug. 17, 1955]

§ 521.7 Terms of special certificates.

(a) Each special certificate shall specify the conditions and limitations under which it is granted, including the name of the apprentice, the skilled trade in which he is to be employed, the subminimum wage rates and the periods of time during which such wage rates may be paid.

(b) The terms of any special certificate, including the wages specified therein, may be amended for cause.

ı) Every employer who employs an
ırentice under this part must keep
records called for under the rec-
keeping regulations (Part 516 of
ɜ chapter), including designation of
ırentices on the payroll. In addi-
ı, every employer who employs ap-
ntices under temporary or special
tificates issued to or held by such
ployer shall preserve the appren-
ship program, apprenticeship
eement and special certificate
ler which such apprentice is em-
yed.

ɔ) Every joint apprenticeship com-
tee which holds a certificate under
ɜ part shall keep the following
ords for each apprentice under its
trol and supervision:

l) The apprenticeship program, ap-
nticeship agreement and special
tificate under which the apprentice
mployed by an employer;

ƨ) The cumulative amount of work
ɔerience gained by the apprentice,
order to establish the proper wage
the time of his assignment to an
ployer; and

3) A list of the employers to whom
ɜ apprentice was assigned and the
ɾiod of time he worked for each em-
yer.

ɔ) The records required by para-
phs (a) and (b) of this section shall
maintained and preserved for at
st three years from the termination
the apprenticeship. Such records
ıll be kept safe and accessible at the
ce or places of employment or at
ɜ place or places where such records
ɜ customarily maintained. All rec-
ls shall be open at any time to in-
ɛction and transcription by the Ad-
nistrator or his authorized repre-
ıtative.

ƨ1.9 Amendment of this part.

The Administrator may at any time
on his own motion or upon written
ɿuest of any interested person set-
g forth reasonable grounds there-
, and after opportunity has been
ven to interested persons to present
eir views, amend or revoke any of
e terms of this part.

ɜ FR 5683, July 18, 1957]

The Administrator or his authorized representative may conduct an investigation, which may include a hearing, prior to issuing or denying an application for a special certificate. To the extent he deems appropriate, the Administrator or his authorized representative may provide an opportunity to other interested persons to present data and views on the application prior to granting or denying an apprentice certificate.

[24 FR 204, Jan. 8, 1959]

§ 521.11 Reconsideration and review.

(a) Any person aggrieved by the action of an authorized representative of the Administrator in denying or granting a special certificate may, within 15 days after such action, (1) file a written request for reconsideration thereof by the authorized representative of the Administrator who made the decision in the first instance, or (2) file a written request for review of the decision by the Administrator or an authorized representative who has taken no part in the action which is the subject of review.

(b) A request for reconsideration shall be accompanied by a statement of the additional evidence which the applicant believes may materially affect the decision together with a showing that there were reasonable grounds for failure to present such evidence in the original proceedings.

(c) Any person aggrieved by the action of an authorized representative of the Administrator in denying a request for reconsideration may, within 15 days thereafter, file with the Administrator a written request for review.

(d) Any person aggrieved by the reconsidered determination of an authorized representative of the Administrator may within 15 days after such determination file with the Administrator a written request for review.

(e) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(f) If a request for reconsideration or review is granted, the Administrator or his authorized representative may, to the extent he deems it appropriate,

portunity to present data and views.

[20 FR 5972, Aug. 17, 1955, as amended at 22 FR 5683, July 18, 1957; 24 FR 204, Jan. 8, 1959]

PART 522—EMPLOYMENT OF LEARNERS

GENERAL REGULATIONS

Sec.
522.1 Applicability of regulations contained in this part.
522.2 Definitions.
522.3 Application for a learner certificate.
522.4 Procedure for action upon an application.
522.5 Conditions governing issuance of a learner certificate.
522.6 Terms and conditions of employment under learner certificates.
522.7 Employment records to be kept.
522.8 Amendment or replacement of a learner certificate.
522.9 Reconsideration and review.
522.10 Supplemental industry regulations.
522.11 Amendment or revocation of the regulations contained in this part.

EMPLOYMENT OF LEARNERS IN SPECIFIED INDUSTRIES

APPAREL INDUSTRY

522.20 Applicability of general learner regulations.
522.21 Applicability of §§ 522.20 to 522.25.
522.22 Number or proportion of learners.
522.23 Learner occupations and learning periods.
522.24 Special minimum wage rates.
522.25 General denial and restriction policies.

KNITTED WEAR INDUSTRY

522.30 Applicability of general learner regulations.
522.31 Applicability of §§ 522.30 to 522.35.
522.32 Number or proportion of learners.
522.33 Learner occupations.
522.34 Learning periods.
522.35 Special minimum wage rates.

HOSIERY INDUSTRY

522.40 Applicability of general learner regulations.
522.41 Applicability of §§ 522.40 to 522.43.
522.42 Number or proportion of learners.
522.43 Learner occupations, learning periods and special minimum wage rates.

SHOE MANUFACTURING INDUSTRY

522.50 General denial policy.
522.51 Applicability of § 522.50.

Sec.
522.60 Applicability of general learner regulations.
522.61 Applicability of §§ 522.60 to 522.65.
522.62 Number or proportion of learners.
522.63 Learner occupations.
522.64 Learning period.
522.65 Special minimum wage rates.

CIGAR INDUSTRY

522.80 Applicability of general learner regulations.
522.81 Applicability of §§ 522.80 to 522.85.
522.82 Number or proportion of learners.
522.83 Learner occupations.
522.84 Learning periods.
522.85 Special minimum wage rates.

LUGGAGE, SMALL LEATHER GOODS AND LADIES' HANDBAG INDUSTRIES

522.90 Applicability of general learner regulations.
522.91 Applicability of §§ 522.90 to 522.93.
522.92 Issuance of learner certificates.
522.93 Learner certificates in extraordinary circumstances.

SMALL ELECTRICAL PRODUCTS INDUSTRY

522.100 Applicability of general regulations.
522.101 Applicability of §§ 522.100 to 522.103.
522.102 Issuance of learner certificates.
522.103 Learner certificates in exceptional circumstances.

MEN'S AND BOYS' CLOTHING INDUSTRY

522.104 General denial policy.

OFFICE AND CLERICAL OCCUPATIONS IN ANY INDUSTRY

522.105 General denial policy.

AUTHORITY: Secs. 14, 52 Stat. 1062, 1064 (29 U.S.C. 214); secs. 2-12, 60 Stat. 237-244; (5 U.S.C. 1001-1011).

GENERAL REGULATIONS

§ 522.1 Applicability of regulations contained in this part.

(a) The regulations contained in this part are issued in accordance with section 14 of the Fair Labor Standards Act of 1938, as amended, to provide for the employment under special certificates of learners at wages lower than the minimum wage applicable under section 6 of the Act. That section, in pertinent part, reads:

> The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1) the employment of learners * * * under special certificates issued pursuant to the regulations of the Administrator, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Administrator shall prescribe * * *

(b) Such certificates shall be subject to the provisions herinafter set forth and to such additional terms and conditions as may be established in supplemental regulations applicable to the employment of learners in particular industries issued pursuant to § 522.10.

[20 FR 646, Jan. 29, 1955]

§ 522.2 Definitions.

As used in the regulations contained in this part:

(a) A *learner* is a worker whose total experience in an authorized learner occupation in the industry within the past three years, except as otherwise provided in applicable supplemental regulations for a particular industry, is less than the period of time allowed as a learning period for that occupation in a learner certificate issued pursuant to the regulations in this part.

(b) An *experienced worker* is a worker whose total experience in an authorized learner occupation in the industry within the past three years, except as otherwise provided in applicable supplemental regulations for a particular industry, is at least equal to the period of time allowed as a learning period for that occupation in a learner certificate issued pursuant to the regulations in this part.

(c) *Experienced worker available for employment* means an experienced worker residing within the area from which the plant customarily draws its labor supply or within a reasonable commuting distance of such area, and who is willing and able to accept employment in the plant; or an experienced worker residing outside of the area from which the plant customarily draws its labor supply, who has in fact made himself available for employment at the plant. A former experienced worker of a plant or its predecessor which has closed and moved its operations to another locality, who has made himself available for employment by the employer, shall also be considered an experienced worker available for employment.

(d) A *new plant* is a plant which has been in operation in a given industry for less than eight months subsequent either to its initial establishment in that industry or to its reopening after being out of operation for a period of more than eight months.

(e) An *expanding plant* is a plant whose labor force is being substantially increased by reason of an expansion program (1) through the installation of additional production equipment; (2) through again placing into operation machinery which has been idle for a period in excess of 8 months; or (3) through adding an additional shift.

[20 FR 646, Jan. 29, 1955]

§ 522.3 Application for a learner certificate.

(a) Whenever the employment of learners at wages lower than the minimum wage applicable under section 6 of the Fair Labor Standards Act of 1938, as amended, is believed necessary to prevent curtailment of opportunities for employment in a specified plant, an application for a certificate authorizing the employment of such learners at subminimum wage rates may be filed by the employer with the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. A copy of such application shall be filed simultaneously with the appropriate Regional Office of these Divisions. With respect to employees working in Puerto Rico or in the Virgin Islands, application shall be filed with the Territorial Director of the Wage and Hour Division, U.S. Department of Labor, Santurce, San Juan, Puerto Rico.

(b) Application must be made on the official form furnished by these Divisions and must contain all information required by such form, including among other things, information concerning efforts made by the applicant to obtain experienced workers, the occupations in which learners are to be employed, the number of learners previously hired, whether learners are actually available, the number of learners requested, their proposed hourly rates and learning periods in number of hours, the number of experienced workers in such occupations and their straight-time average hourly earnings during the last payroll period, the number of plant workers employed during previous periods, and the type of equipment to be used by learners. Any applicant may also submit such additional information as may be pertinent.

(c) Any application which fails to present the information required by the forms may be returned to the applicant with a notation of deficiencies and without prejudice against submission of a new or revised application.

(d) Separate application must be made with respect to each plant in which the applicant desires to employ learners at subminimum wage rates. Where an establishment occupies several buildings in the same community and the workers in those buildings are engaged in the various processes necessary to the manufacture of primary products of the establishment, the workers shall be regarded as employees of the same plant for the purposes of the regulations in this part.

(e) When an application is filed for a learner certificate for a new or expanding plant and the applicant is moving from a plant of the same company or of a closely related company in another location, or is tranferring production from such plant, or has recently so moved or transferred production, the applicant shall attach to the application a signed statement giving the following information: (1) Name, location and products of the plant from which the applicant is moving or is transferring production; (2) average and minimum wage rates paid at such plant for the occupations in which learners are requested to be employed at subminimum rates; and (3) reasons for removal or transfer of production.

(f) Application for a renewal of a learner certificate shall be made on the same form as described in this section. No effective learner certificate shall expire until action on an application for renewal shall have been finally determined, provided that such application has been properly executed in accordance with the requirements, and filed with and received by the Administrator of the Wage and House and Public Contracts Divisions not less than fifteen nor more than thirty days prior to the expiration date. A final determination means either the granting of or initial denial of the application for renewal of a learner certificate, or withdrawal of the application. A "properly executed application" is one which contains the complete information required on the form, and the required certification by a responsible official of the applicant company.

(g) Upon making application for a learner certificate or for renewal thereof, an employer shall post a notice of filing of application on a form supplied by these Divisions in a conspicuous place in each department of the plant where he proposes to employ learners at subminimum wage rates. Such notice shall remain posted until such time as the application shall have been acted upon by the Administrator or his authorized representative. The notice must set forth, among other things, the number of learners that the employer has requested permission to employ; the occupations in which the learners will be employed; and a representation by a responsible official that experienced workers are not available, and that the employment of learners at subminimum wage rates is necessary in order to prevent a curtailment of opportunities for employment.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1215-0012)

[20 FR 646, Jan. 29, 1955, as amended at 49 FR 18294, Apr. 30, 1984]

§ 522.4 Procedure for action upon an application.

(a) Upon receipt of an application for a certificate or a renewal of a certificate, the Administrator or his authorized representative shall consider all of the relevant facts and, subject to the conditions specified in § 522.5, shall issue or deny a learner certificate. To the extent he deems appropriate, the Administrator or his authorized representative may provide an opportunity to other interested persons to present data and views on the application prior to granting or denying a learner certificate.

(b) If a learner certificate is issued, there shall be published in the FEDERAL REGISTER a statement of the terms of such certificate together with a notice that, pursuant to § 522.9, for fifteen (15) days following such publication any interested persons may file written requests for reconsideration or review.

(c) If a learner certificate is denied, notice of such denial shall be sent to the employer and such denial shall be without prejudice to the filing of any subsequent application.

[20 FR 647, Jan. 29, 1955, as amended at 24 FR 204, Jan. 8, 1959]

§ 522.5 Conditions governing issuance of a learner certificate.

The following conditions shall govern the issuance of a special certificate authorizing the employment of learners at subminimum wage rates:

(a) An adequate supply of qualified experienced workers is not available for employment; the experienced workers presently employed in the plant in occupations in which learners are requested are afforded an opportunity, to the fullest extent possible, for full-time employment; learners are available for employment; and the granting of a certificate is necessary in order to prevent curtailment of opportunities for employment.

(b) Reasonable efforts have been made to recruit experienced workers, including the placement of an order with the local State or Territorial Public Employment Service Office (except in possessions where there is not such office) not more than fifteen days prior to the date of application. Written evidence from such office that the order has been placed shall be submitted by the employer with the application.

(c) The issuance of a learner certificate will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry.

(d) Abnormal labor conditions such as a strike, lock-out, or other similar condition, do not exist at the plant for which a learner certificate is requested.

(e) There are no serious outstanding violations of the provisions of a learner certificate previously issued to the company, nor have there been any serious violations of the act which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

(f) The occupation or occupations in which learners are to receive training involve a sufficient degree of skill to necessitate an appreciable training period.

(g) Learners shall be afforded every reasonable opportunity for continued employment upon completion of the learning period.

[20 FR 647, Jan. 29, 1955, as amended at 22 FR 554, Jan. 29, 1957]

§ 522.6 Terms and conditions of employment under learner certificates.

(a) A learner certificate, if issued, shall specify, among other things: (1) The number or proportion of learners authorized to be employed on any one day; (2) the occupations in which learners may be employed; (3) the subminimum wage rates permitted during the authorized learning period; (4) the learning period for each authorized learner occupation; and (5) the effective and expiration dates of the certificate.

(b) A learner certificate for normal labor turnover purposes may be issued for a period not longer than one year. A learner certificate for a new or expanding plant may be issued for a period not longer than six months. A renewal certificate will not be issued unless there is a clear showing that the conditions set forth in § 522.5 still prevail. A renewal expansion certificate will not be issued unless there is also a clear showing that there has been a substantial increase in the labor force during the period when a previous expansion certificate was in effect, except for individual cases where the plant expansion program has been postponed due to exceptional circumstances.

(c) Learners properly hired prior to the date on which a learner certificate expires may be continued in employment at subminimum wage rates for the duration of their authorized learning period under the terms of the certificate, even though the certificate expired before the learning period is completed.

(d) A copy of the learner certificate shall be posted by the employer during its effective period in a conspicuous place in each department of the plant where learners are to be employed.

(e) No learner certificate may be issued retroactively.

(f) No learners shall be hired under a learner certificate if, at the time the employment begins, experienced workers capable of equalling the performance of a worker of minimum acceptable skill are available for employment. Each time before hiring learners during the effective period of the certificate an order for experienced workers must be placed or be on active file with the local State or Territorial Public Employment Service Office (except in possessions where there is no such office). Written evidence that an order has been placed or is on active file shall be maintained in the employer's records.

(g) No learner shall be hired under a learner certificate while abnormal labor conditions such as a strike, lockout, or other similar condition, exist in the plant.

(h) Except as otherwise specified in applicable supplemental industry regulations, the number of hours of previous employment must be deducted from the authorized learning period if within the past three years a learner has been employed in a given occupation and industry for less than the total number of hours authorized as a learning period. There shall also be deducted from the authorized learning period all such hours of employment or training on rags or scrap, or pertinent training in vocational training schools or similar training facilities.

(i) Under no circumstances will certificate be granted authorizing the employment of learners at subminimum wage rates as homeworkers, or in maintenance occupations such as watchman or porter, or in operations of a temporary or sporadic nature.

(j) If experienced workers are paid on a piece rate basis, learners shall be paid at least the same piece rates as experienced workers employed on similar work in the plant and shall receive earnings based on such piece rates whenever such earnings exceed the subminimum wage rates permitted in the certificate.

(k) No provision of any learner certificate shall excuse noncompliance with higher standards applicable to learners which may be established under any other Federal law, or any State law, or trade union agreement.

[20 FR 647, Jan. 29, 1955, as amended at 22 FR 554, Jan 29, 1957]

§ 522.7 Employment records to be kept.

In addition to other records required under the record-keeping regulations (Part 516 of this chapter), the employer shall keep the following records specifically relating to learners employed at subminimum wage rates:

(a) Each worker employed as a learner under a learner certificate shall be designated as such on the payroll records kept by the employer. All such learners shall be listed together as a separate group on the payroll records, with each learner's occupation being shown.

(b) The employer shall also obtain at the time of hiring and keep in his records a statement signed by each such learner showing all applicable experience which the learner may have had in the industry in which he is employed during the preceding three years, or as otherwise required in the applicable supplemental industry regulations. The statement shall contain the dates of such previous employment, names and addresses of employers, the occupation or occupations in which the learner was engaged and the types of products upon which the learner worked. The statement shall also contain information concerning pertinent training in vocational training schools or similar training facilities, including the dates of such training and the identity of the vocational school or training facility. If the learner has had no applicable experience or pertinent training, a statement to that effect signed by the learner should likewise be kept in the employer's records.

(c) The employer shall maintain a file of all evidence and records, including any correspondence, pertaining to the filing or cancellation of job orders placed with the local State or Territorial Public Employment Service Office under §§ 522.5(b) and 522.6(f).

(d) The records required in this section, including a copy of any special certificate issued, shall be kept and made available for inspection at all times for at least three years from the last effective date of the certificate.

[20 FR 648, Jan. 29, 1955, as amended at 22 FR 555, Jan 29, 1957]

§ 522.8 Amendment or replacement of a learner certificate.

The Administrator upon his own motion may amend the provisions of a learner certificate when it is necessary by reason of the amendment of these or any supplemental industry regulations, or may withdraw a learner certificate and issue a replacement certificate when necessary to correct omissions or apparent defects in the original certificate.

[20 FR 648, Jan. 29, 1955]

§ 522.9 Reconsideration and review.

(a) Any person aggrieved by the action of an authorized representative of the Administrator denying or granting a learner certificate may, within 15 days after such action, (1) file a written request for reconsideration thereof by the authorized representative of the Administrator who made the decision in the first instance, or (2) file a written request for review of the decision by the Administrator or an authorized representative who has taken no part in the action which is the subject of review.

(b) A request for reconsideration shall be accompanied by a statement of the additional evidence which the applicant believes may materially affect the decision and a showing that there were reasonable grounds for failure to present such evidence in the original proceedings.

(c) Any person aggrieved by the reconsidered determination of an authorized representative of the Administrator may within 15 days after such determination, file with the Administrator a written request for review.

(d) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(e) If a request for reconsideration or review is granted, the Administrator or his authorized representative may, to the extent he deems it appropriate, afford other interested persons an opportunity to present data and views.

[20 FR 648, Jan. 29, 1955, as amended at 21 FR 5316, July 17, 1956; 24 FR 204, Jan. 8, 1959]

§ 522.10 Supplemental industry regulations.

(a) Upon application of any person or persons, representing an industry or branch thereof, or upon his own motion, the Administrator, if he deems it advisiable, may, after appropriate and timely notice to interested parties, cause a hearing to be held to determine the need for the employment of learners at wages lower than the minimum wage applicable under section 6 of the act in order to prevent curtailment of opportunities for employment in an industry or branch thereof; and if such need is found to exist, to determine the occupation or occupations which require a learning period and the limitations as to wages, time, number, proportion, and length of service pursuant to which learner certificates authorizing the employment of learners at such subminimum wage rates may be issued to employers. Such hearing shall be held before the Administrator or his duly authorized representative. Following such hearing the Administrator shall, by supplemental regulations, prescribe the conditions under which special certificates shall be issued for the employment of learners in such industry or branch thereof, if he determines that there is a need therefor to prevent curtailment of opportunities for employment.

(b) The Administrator may issue a subpoena for attendance at such hearings to any party upon request and upon a showing of general relevance and reasonable scope of the evidence sought. The Administrator may, on his own motion, or that of his authorized representative, cause to be brought before him or his authorized representative any witness whose testimony he deems material to the matter in issue.

(c) Such supplemental regulations as are issued shall not apply to the employment of learners at subminimum wage rates in Puerto Rico or the Virgin Islands, unless they so provide.

[20 FR 648, Jan. 29, 1955. Redesignated at 21 FR 5316, July 17, 1956]

§ 522.11 Amendment or revocation of the regulations contained in this part.

The Administrator may at any time upon his own motion or upon written request of any interested person or persons setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations in this part or of the supplemental regulations applicable to the employment of learners in particular industries.

[20 FR 648, Jan. 29, 1955. Redesignated at 21 FR 5316, July 17, 1956]

EMPLOYMENT OF LEARNERS IN SPECIFIED INDUSTRIES

APPAREL INDUSTRY

SOURCE: Sections 522.20 through 522.25 appear at 28 FR 1422, Feb. 14, 1963, unless otherwise noted.

§ 522.20 Applicability of general learner regulations.

The employment of learners pursuant to the provisions of §§ 522.20 through 522.24 shall be subject to all provisions of the general regulations governing the employment of learners (§§ 522.1 through 522.9), except to the extent to which any provision of such general regulations is inconsistent with any provisions of §§ 522.20 through 522.25.

§ 522.21 Applicability of §§ 522.20 to 522.25.

For purposes of §§ 522.20 to 522.25, the apparel industry consists of the following six divisions:

(a) Women's apparel, defined as follows: The production of women's, misses' and juniors' dresses; washable service garments; blouses from woven or purchased knit fabric; women's, misses', children's and infants' underwear, nightwear and negligees from woven fabrics; corsets and other body supporting garments from any material; infants' and children's outerwear; and other garments similar to the foregoing.

(b) Single pants, shirts and allied garments, defined as follows: The production of men's and boys' single pants, washable service garments, work shirts, overalls, overall jackets and coveralls from any material; dress and sport shirts from woven fabric or purchased knit fabric; and collars and sleeping wear from woven fabric.

(c) Sportswear and other odd outerwear, defined as follows: The manufacture of men's, women's and children's sportswear and other odd outerwear, including windbreakers, lumberjackets, mackinaws and mackinaw coats, melton jackets, blanket-lined and similar coats, leatherette coats and jackets, hunting coats and vests, riding clothing, ski-suits and snow-suits (except children's ski-suits and snow-suits), and similar garments from any woven materials or from purchased knitted materials.

(d) Rainwear, defined as follows: The manufacture of waterproofed garments and raincoats from oiled cloth or other materials, whether vulcanized, rubberized, cravenetted, or otherwise processed.

(e) Robes, defined as follows: The manufacture of robes from any woven material or from purchased knitted materials, including, without limitation, men's, women's and children's bath, lounging and beach robes and dressing gowns.

(f) Leather and sheep-lined clothing, defined as follows: The manufacture of leather, leather-trimmed and sheep-lined garments for men, women or children.

§ 522.22 Number or proportion of learners.

(a) The number of learners which any employer may be authorized to employ by any special certificate issued to meet normal labor turnover needs shall not exceed on any one workday ten percent of the total number of factory production workers in the plant: *Provided*, That, in plants employing less than 100 workers, a maximum of ten learners may be authorized.

(b) Special certificates may be issued to new or expanding plants authorizing the employment of learners in authorized occupations to the extent of need.

§ 522.23 Learner occupations and learning periods.

(a) In the occupations of sewing machine operating, final pressing, hand-sewing, and finishing operations involving hand-sewing, learners may be employed under a certificate at special minimum wage rates as provided in § 522.24 for a period not to exceed 320 hours. In the occupation of pressing other than final pressing), a learner may be employed at such rates for a period not to exceed 160 hours.

(b) In the occupations of final inspection of assembled garments and of other machine operating (except the "cutting room" operations of knife or diecutting, spreading, and marking, wherever performed in the plant), a earner may be employed under a certificate at special minimum wage rates as provided in § 522.24 for a period not to exceed 160 hours: *Provided, however*, That these occupations shall be authorized under a certificate only in exceptional circumstances upon a showing by an individual employer making application for a special certificate that the occupation(s) as performed in he plant do in fact require substantial kill, training and judgment, and that opportunities for employment will in act be curtailed in the absence of a certificate specifically authorizing the employment of learners at special minimum wage rates in these occupations.

(c) No worker shall be employed as a earner at special minimum rates in more than two of the learner occupaions authorized by this section.

(d) If, within the previous three years, a worker has been employed in any division of the apparel industry, or in the manufacturing of men's and boys' underwear from any woven fabric in establishments in the knitted wear industry, in an authorized learner occupation for less than the maximum period authorized for that occupation, the number of hours of previous employment shall be deducted from the learning period applicable to that occupation.

§ 522.24 Special minimum wage rates.

(a) The special minimum wage rates of learners employed in occupations for which a 320-hour period is authorized under § 522.23(a) shall during that period be not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and not less than $4.10 an hour thereafter.

(b) The rates for experienced workers in any one of the occupations shown in § 522.23(a) for which a 320-hour learning period is authorized, who are being retrained under the terms of a learner certificate in any other occupation shown in that paragraph having such a 320-hour maximum period, shall not be less than $3.20 an hour for the first 160 hours and not less than $3.25 an hour for the remaining 160 hours through November 2, 1990; not less than $3.65 an hour for the first 160 hours and not less than $3.70 an hour for the remaining 160 hours through March 31, 1991; and not less than $4.10 an hour for the first 160 hours and not less than $4.15 an hour for the remaining 160 hours thereafter.

(c) The rates for learners employed in the occupation of final inspection of assembled garments under § 522.23(b) shall be not less than $3.25 an hour during the authorized 160-hour learning period through November 2, 1990; not less than $3.70 an hour during such authorized learning period through March 31, 1991; and not less than $4.15 an hour during such authorized learning period thereafter.

(d) The rates for learners employed in any occupation, other than final inspection of assembled garments, for which a 160-hour learning period is authorized in § 522.23 (a) or (b) shall be not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter.

(e) The earnings of learners employed in occupations in which experienced workers are compensated on a piece-rate basis shall be based on those piece rates when they yield more than the authorized special minimum wage rates, in accordance with § 522.6(j).

(f) No experienced worker shall be employed under the terms of a learner certificate, except as provided in paragraph (b) of this section and in paragraph (c) of § 522.23.

[39 FR 29180, Aug. 14, 1974, as amended at 55 FR 46466, Nov. 2, 1990; 55 FR 47028, Nov. 8, 1990]

§ 522.25 General denial and restriction policies.

(a) All applications for special certificates authorizing the employment of learners at special minimum wage rates in the manufacture of products in the following divisions shall be denied:

(1) The rainwear division of the apparel industry as defined in § 522.21(d);

(2) The leather and sheep-lined clothing division of the apparel industry as defined in § 522.21(f).

(b) Applications for special certificates authorizing the employment of learners at special minimum wage rates shall also be denied:

(1) In the women's apparel division of the apparel industry as defined in § 522.21(a) for the manufacture of women's, misses', and juniors' dresses selling at or above $6.75 per dress or $81.00 per dozen wholesale, before any discount, and for the manufacture of women's, misses', and juniors' blouses selling at or above $3.00 per blouse or $36.00 per dozen wholesale, before any discount;

(2) For the manufacture of the products of the robes division of the apparel industry as defined in § 522.21(e) unless the individual applicant provides substantial and preponderant evidence that opportunities for employment will in fact be curtailed in the absence of a certificate authorizing the employment of learners at special minimum wage rates.

KNITTED WEAR INDUSTRY

SOURCE: Sections 522.30 through 522.35 appear at 20 FR 2305, Apr. 9, 1955, unless otherwise noted.

§ 522.30 Applicability of general learner regulations.

The employment of learners pursuant to the provisions of §§ 522.30 through 522.35 shall be subject to all provisions of the general regulations governing the employment of learners (§§ 522.1 through 522.9), except to the extent to which any provision of such general regulations is inconsistent with any provision of §§ 522.30 through 522.35.

§ 522.31 Applicability of §§ 522.30 to 522.35.

For the purpose of §§ 522.30 to 522.35 the knitted wear industry is defined as follows:

(a) The manufacturing, dyeing or other finishing of any knitted fabric made from any yarn or mixture of yarns, except fulled suitings, coatings, topcoatings, or overcoatings containing more than 25 percent, by weight, of wool or animal fiber other than silk.

(b) The manufacturing, dyeing or other finishing, from any yarn or mixture of yarns, or from purchased knitted fabric, of any of the following products:

(1) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.

(2) Fleece-lined garments; excluding, however, all fleece-lined garments made from purchased knitted fabric, except fabric containing cotton only or containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(3) Knitted towels or cloths.

(c) Knitted shirts of cotton or any other fiber or any mixture of fibers which have been manufactured in the same establishment as that where the knitting process is performed.

(d) The manufacturing of men's and boys' underwear from any woven fabric.

BEST COPY AVAILABLE

(e) The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing or other finishing of knitted garments, knitted garment sections, or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed; and the manufacture of bathing suits from any purchased fabric: *Provided*, That the manufacturing, dyeing or other finishing of gloves, mittens, and hosiery shall not be included.

§ 522.32 Number or proportion of learners.

(a) The number of learners which any employer may be authorized to employ by any special certificate ssued to meet normal labor turnover needs shall not exceed on any one workday five percent of the total number of productive factory workers n the plant: *Provided*, That, in plants employing less than 100 workers, a maximum of 5 learners may be authorized.

(b) Special certificates may be issued o new or expanding plants authorizng the employment of learners in authorized occupations to the extent of need.

§ 522.33 Learner occupations.

Learners may be employed only in he occupations of machine knitter, machine stitcher, presser, winder, dyeing machine operator, brush machine operator, and dryer operator, except that in exceptional cases the mployment of learners at a subminimum wage may be authorized in other occupations upon a showing by any individual employer making application or a special certificate that a denial would result in a curtailment of opporunities for employment.

522.34 Learning periods.

(a) No worker shall be employed as a earner under the certificate after 480 hours' experience in the occupation of machine knitter, or 320 hours in the ccupations of machine stitcher or resser, or 240 hours in the occupations of winder, dyeing machine operator, brush machine operator, or dryer operator.

(b) If a worker who is being trained in any authorized learner occupation has been employed in that same occupation in the knitted wear industry within the previous three years, the hours of such previous employment shall be deducted from the authorized learning period.

(c) If a worker is employed in the manufacture of men's and boys' underwear from any woven fabric in the occupations of machine stitcher or presser, all hours of employment within the previous three years as a machine stitcher or presser in the apparel industry shall be deducted from the authorized learning period in the event such worker is subsequently employed in the same occupation.

(d) No worker shall be employed as a learner at subminimum rates in more than two of the learner occupations authorized in § 522.33.

[20 FR 2305, Apr. 9, 1955, as amended at 23 FR 5664, July 26, 1958; 26 FR 8284, Sept. 2, 1961]

§ 522.35 Special minimum wage rates.

(a) The special minimum rate which may be authorized in special certificates issued in the knitted wear industry shall be not less than $3.25 an hour through November 2, 1990; not less than $3.70 an hour through March 31, 1991; and, not less than $4.15 an hour thereafter.

(b) The earnings of learners employed on a piece rate basis shall be based on those piece rates if in excess of the authorized subminimum rates, in accordance with § 522.6(j).

[20 FR 2305, Apr. 9, 1955, as amended at 43 FR 5817, Feb. 10, 1978; 55 FR 46467, Nov. 2, 1990; 55 FR 47028, Nov. 8, 1990]

HOSIERY INDUSTRY

§ 522.40 Applicability of general learner regulations.

The employment of learners pursuant to the provisions of §§ 522.40 to 522.43 shall be subject to all provisions of the general regulations governing the employment of learners (§§ 522.1 to 522.9), except to the extent to which any provision of such general regulations is inconsistent with any provision of §§ 522.40 to 522.43.

[26 FR 9583, Oct. 11, 1961]

§ 522.41 Applicability of §§ 522.40 to 522.43.

For purposes of §§ 522.40 to 522.43, the "hosiery industry" is defined as follows: The manufacture or processing of hosiery including, among other processes, the knitting, dyeing, clocking, and all phases of finishing hosiery, but not including the manufacture or processing of yarn or thread.

[26 FR 9583, Oct. 11, 1961]

§ 522.42 Number or proportion of learners.

(a) The number of learners which any employer may be authorized to employ by any special certificates issued to meet normal labor turnover needs shall not exceed on any one workday five percent of the total number of productive factory workers in the plant; provided that, in plants employing less than 100 workers, a maximum of 5 learners may be authorized.

(b) Special certificates may be issued to new or expanding plants authorizing the employment of learners in authorized occupations to the extent of need.

[20 FR 2306, Apr. 9, 1955]

§ 522.43 Learner occupations, learning periods and special minimum wage rates.

(a) A person who has had no previous experience in any of the following occupations in the hosiery industry may be employed as a learner in any of the occupations for the maximum number of hours and at the special rates set out in paragraphs (a) (1) through (9) of this section.

(1) In the seamless branch, knitting (transfer top only) and looping, for 960 hours, at not less than $3.20 an hour for the first 480 hours and at not less than $3.275 for the remaining 480 hours through November 2, 1990; not less than $3.65 an hour for the first 480 hours and not less than $3.725 for the remaining 480 hours through March 31, 1991; and not less than $4.10 an hour for the first 480 hours and not less than $4.175 for the remaining 480 hours thereafter.

(2) In the seamless branch, pairing (women's nylon) and mending (women's nylon), for 720 hours at not less than $3.20 an hour for the first 360 hours and at not less than $3.275 an hour for the remaining 360 hours through November 2, 1990; not less than $3.65 an hour for the first 360 hours and not less than $3.725 an hour for the remaining 360 hours through March 31, 1991; and not less than $4.10 an hour for the first 360 hours and not less than $4.175 an hour for the remaining 360 hours thereafter.

(3) In the seamless branch, topping, welting, and mending (other than women's nylon), for 480 hours at not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter.

(4) In the seamless branch, boarding (women's nylon), folding (women's nylon and rayon) and pairing (other than women's nylon), for 360 hours, at not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and not less than $4.10 an hour thereafter.

(5) In the seamless branch, knitting (except transfer top), seaming, examining and inspection, folding (other than women's nylon and rayon), and boarding (other than women's nylon), for 240 hours, at not less than $3.20 an hour through November 2, 1990; at not less than $3.65 an hour through March 31, 1991; and not less than $4.10 an hour thereafter.

(6) In the full-fashioned branch, seaming (leg and foot), for 960 hours, at not less than $3.25 an hour for the first 480 hours and $3.325 an hour for the remaining 480 hours through November 2, 1990; at not less than $3.70 an hour for the first 480 hours and $3.775 an hour for the remaining 480 hours through March 31, 1991; and, at not less than $4.15 an hour for the first 480 hours and at not less than $4.225 an hour for the remaining 480 hours thereafter.

(7) In the full-fashioned branch, pairing and mending, for 720 hours at not less than $3.25 an hour for the first 360 hours and not less than $3.325 an hour for the remaining 360

urs through November 2, 1990; at
t less than $3.70 an hour for the
st 360 hours and at not less than
.775 an hour for the remaining 360
urs through March 31, 1991; and, at
t less than $4.15 an hour for the
st 360 hours and at not less than
225 an hour for the remaining 360
urs thereafter.

8) In the full-fashioned branch,
arding and folding for 360 hours, at
t less than $3.25 an hour through
vember 2, 1990; at not less than
70 an hour through March 31, 1991,
d, at not less than $4.15 an hour
ereafter.

9) In the full-fashioned branch, ex-
ining and inspecting, and seaming
wing-other than leg and foot), for
) hours at not less than $3.25 an
ur through November 2, 1990; at not
s than $3.70 an hour through
rch 31, 1991; and, at not less than
15 an hour thereafter.

b) The earnings of learners em-
yed on a piece rate basis shall be
ed on those piece rates if in excess
the authorized special minimum
es, in accordance with § 522.6(j).

c) A person who has had previous
perience or training in the hosiery
ustry at any time in any authorized
rner occupation for less than the
horized learning period may be em-
yed as a learner in the same occu-
ion at the applicable special mini-
m rates until the number of hours
horized for that occupation are
npleted.

d) A worker who has had full train-
in any authorized learner occupa-
n may be transferred to any other
rner occupation for a period not to
eed one-half of the learning period
horized for the occupation at not
than $3.275 an hour in the seam-
branch and at not less than $3.325
hour in the full-fashioned branch
ough November 2, 1990; at not less
n $3.725 an hour in the seamless
nch and at not less than $3.775 an
r in the full-fashioned branch
ough March 31, 1991; and at not
than $4.175 an hour in the seam-
branch and at not less than $4.225
hour in the full-fashioned branch
reafter. A worker who has partial
ining in any auth[illegible]d learner occupation may be transferred to any other learner occupation for either:

(1) A period not to exceed one-half of the learning period authorized for that occupation, at not less than $3.275 an hour in the seamless branch and at not less than $3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than $3.725 an hour in the seamless branch and at not less than $3.775 an hour in the full-fashioned branch through March 31, 1991; and, at not less than $4.175 an hour in the seamless branch and at not less than $4.225 an hour in the full-fashioned branch thereafter; or,

(2) The balance of the number of hours permitted as a learning period for the occupation to which the learner is being transferred, at the applicable special minimum rates set forth in paragraph (a) of this section: *Provided, however,* That (i) no worker may be employed as a learner at learner rates in more than two authorized occupations; (ii) no worker who has completed the authorized learning period in the occupation of pairing may be employed as a learner at learner rates in the occupation of folding or inspection; and, (iii) no worker who has completed the authorized learning period may be employed as a learner at learner rates when transferring from the seamless branch of the hosiery industry to the full-fashioned branch or from the full-fashioned branch to the seamless branch, if the worker is employed in the same occupation as that in which the worker has been previously employed.

[20 FR 2306, Apr. 9, 1955, as amended at 26 FR 9583, Oct. 11, 1961; 43 FR 5817, Feb. 10, 1978; 55 FR 46467, Nov. 2, 1990; 55 FR 47028, Nov. 8, 1990]

SHOE MANUFACTURING INDUSTRY

§ 522.50 General denial policy.

All applications for the employment of learners in the shoe manufacturing industry, as defined in § 522.51 at wages lower than the statutory minimum wage shall be denied.

[32 FR 665, Jan. 20, 1967]

§ 522.51 Applicability of § 522.50.

For the purpose of § 522.50, the shoe manufacturing industry is defined as follows:

(a) The manufacture or partial manufacture of footwear from any material and by any process except knitting, vulcanizing of the entire article or vulcanizing (as distinct from cementing) of the sole to the upper.

(b) The manufacture or partial manufacture of the following types of footwear, subject to the limitations of paragraph (a) of this section but without prejudice to the generality of that paragraph:

Athletic shoes.
Boots.
Boot tops.
Burial shoes.
Custom-made boots or shoes.
Moccasins.
Puttees, except spiral puttees.
Sandals.
Shoes completely rebuilt in a shoe factory.
Slippers.

(c) The manufacture from leather or from any shoe-upper material of all cut stock and findings for footwear, including bows, ornaments, and trimmings.

(d) The manufacture of the following types of cut stock and findings for footwear from any material except from rubber or composition of rubber, molded to shape:

Cutsoles.
Midsoles.
Insoles.
Taps.
Lifts.
Rands.
Toplifts.
Bases.
Shanks.
Boxtoes.
Counters.
Stays.
Stripping.
Sock linings.
Heel pads.

(e) The manufacture of heels from any material except molded rubber, but not including the manufacture of woodheel blocks.

(f) The manufacture of cut upper parts for footwear, including linings, vamps and quarters.

(g) The manufacture of pasted shoe stock.

(h) The manufacture of boot and shoe patterns.

Provided, That: The manufacture of cut stock and findings is included within this definition only when performed principally for their own use by companies engaged in the production of shoes.

[20 FR 2306, Apr. 9, 1955, as amended at 26 FR 8285, Sept. 2, 1961]

GLOVE INDUSTRY

§ 522.60 Applicability of general learner regulations.

The employment of learners pursuant to the provisions of §§ 522.60 to 522.65 shall be subject to all provisions of the general regulations governing the employment of learners (§§ 522.1 to 522.9), except to the extent to which any provisions of such general regulations is inconsistent with any provision of §§ 522.60 to 522.65.

[26 FR 9583, Oct. 11, 1961]

§ 522.61 Applicability of §§ 522.60 to 522.65.

For purposes of §§ 522.60 to 522.65, the glove industry consists of the following four branches:

(a) *Leather glove branch.* This branch includes the manufacture of dress, semi-dress, and work gloves made entirely from leather.

(b) *Woven or knit fabric glove branch.* This branch includes the manufacture of dress or semi-dress gloves from woven or knit fabrics, or combinations of such fabrics with leather.

(c) *Knitted glove branch.* This branch includes the manufacture by machine knitting of gloves and mittens from all types of yarn.

(d) *Work glove branch.* This branch includes the manufacture of work gloves from any type of fabric or combination of fabric and leather.

[20 FR 2307, Apr. 9, 1955, as amended at 26 FR 9584, Oct. 11, 1961]

§ 522.62 Number or proportion of learners.

(a) The number of learners which any employer may be authorized to employ by any special certificate issued to meet normal labor turnover needs shall not exceed on any one work day ten percent of the total number of workers employed in the occupations designated in § 522.63: *Provided*, That as many as ten learners may be authorized in any plant.

(b) Special certificates may be issued to new or expanding plants authorizing the employment of learners in authorized occupations to the extent of need.

[20 FR 2307, Apr. 9, 1955]

§ 522.63 Learner occupations.

Special certificates may be issued authorizing the employment of learners at special minimum wage rates in the glove industry in occupations of hand and machine stitching in the leather glove branch of the industry; in the occupation of machine stitching in the woven or knit fabric and work glove branches of the industry; and in the occupations of finger knitting and finger closing, and hand and machine stitching in the knitted glove branch of the industry.

[26 FR 9584, Oct. 11, 1961]

§ 522.64 Learning period.

(a) The maximum learning period which may be authorized in special certificates issued in the glove industry is 480 hours.

(b) If a worker has had previous experience in the glove industry, the total hours of employment within the previous three years shall be deducted from the maximum training period, as follows:

(1) Hand and machine stitching operations on leather gloves, if a worker is being trained in the leather glove branch.

(2) Finger knitting and finger closing operations on knitted gloves, hand stitching operations on leather or knitted gloves, and machine stitching on leather, knitted, or woven or knit fabric gloves, if a worker is being trained in the knitted glove branch.

(3) Machine stitching on leather, knitted, or woven or knit fabric gloves, if a worker is being trained in the woven or knit fabric branch.

(4) Machine stitching in any type of glove manufacturing, if a worker is being trained in the work glove branch.

[20 FR 2307, Apr. 9, 1955, as amended at 21 FR 581, Jan. 26, 1956]

§ 522.65 Special minimum wage rates.

(a) The special minimum wage rates which may be authorized in special certificates issued in the glove industry shall be as follows:

(1) In the leather glove, woven or knit fabric glove, and knitted glove branches of the industry, not less than $3.20 an hour for the first 320 hours and at not less than $3.30 an hour for the remaining 160 hours through November 2, 1990; at not less than $3.65 an hour for the first 320 hours and at not less than $3.75 an hour for the remaining 160 hours through March 31, 1991; and, at not less $4.10 an hour for the first 320 hours and not less than $4.20 an hour for the remaining 160 hours thereafter.

(2) In the work glove branch of the industry, not less than $3.20 an hour for the first 320 hours and not less than $3.25 an hour for the remaining 160 hours through November 2, 1990; at not less than $3.65 an hour for the first 320 hours and not less than $3.70 an hour for the remaining 160 hours through March 31, 1991; and, at not less than $4.10 an hour for the first 320 hours and not less than $4.15 an hour for the remaining 160 hours.

(b) The earnings of learners employed on a piece rate basis shall be based on those piece rates if in excess of the authorized subminimum rates, in accordance with § 522.6(j).

[20 FR 2307, Apr. 9, 1955, as amended at 43 FR 5818, Feb. 10, 1978; 55 FR 46468, Nov. 2, 1990]

CIGAR INDUSTRY

§ 522.80 Applicability of general learner regulations.

The employment of learners pursuant to the provisions of §§ 522.80 through 522.85 shall be subject to all provisions of the general regulations governing the employment of learners (§§ 522.1 through 522.9), except to the extent to which any provision of such general regulations is inconsistent with any provision of §§ 522.80 through 522.85.

[20 FR 2308, Apr. 9, 1955]

§ 522.81 Applicability of §§ 522.80 to 522.85.

For purposes of §§ 522.80 to 522.85 the cigar industry consists of the cigar manufacturing branch and the leaf processing branch of the cigar industry, which are defined as follows:

(a)(1) "The cigar manufacturing branch of the cigar industry" means the manufacture of cigars from any types of tobacco.

(2) The term "cigar" covers all types of cigars, including cheroots, stogies, and little cigars.

(3) The manufacture of cigars from noncigar types of leaf tobacco and the scrap tobacco therefrom includes the preliminary processing of such tobacco which is performed in the manufacturing plant as an integral part of the manufacturing operation; and

(b)(1) "The leaf processing branch of the cigar industry" means the preparation or marketing (including wholesaling) of cigar types of leaf tobacco (as defined by the Bureau of Agricultural Economics of the United States Department of Agriculture) and the scrap tobacco therefrom for use in the manufacture of cigars and other tobacco products.

(2) The term "preparation" as used herein includes all operations involved in making cigar leaf tobacco and scrap tobacco therefrom suitable for use in the manufacture of cigars, whether performed by employees of warehousemen, manufacturers, leaf dealers, or others. It includes, but not by way of limitation, the operations of grading, sorting, packing, sweating, fermenting, stemming, and conditioning. It does not include, however, such preliminary processing of cigar types of tobacco or scrap tobacco therefrom as is performed in a manufacturing plant as an integral part of the manufacturing operations attending the production of tobacco products other than cigars, nor does it include operations performed by a farmer or on a farm as an incident to or in conjunction with farming operations.

[20 FR 2308, Apr. 9, 1955]

§ 522.82 Number or proportion of learners.

(a) The number of learners which any employer may be authorized to employ by any certificate issued to meet normal labor turnover needs shall not exceed on any one workday ten percent of the total number of factory production workers in the plant: *Provided, however*, That in plants employing less than 100 production workers, a maximum of ten learners may be authorized.

(b) Special certificates may be issued to new or expanding plants authorizing the employment of learners in authorized occupations to the extent of need.

[20 FR 2308, Apr. 9, 1955, as amended at 23 FR 3925, June 5, 1958]

§ 522.83 Learner occupations.

Special certificates may be issued authorizing the employment of learners in the cigar industry in the occupations of cigar machine operating; cigar packing; hand bunch making; hand rolling; hand making Italian stogies; hand stripping; and machine stripping.

[23 FR 3925, June 5, 1958]

§ 522.84 Learning periods.

(a) The maximum learning period which may be authorized in special certificates issued in the cigar industry machine operating in 320 hours; for hand rolling, 960 hours; for hand bunch making, 960 hours; for hand making Italian stogies, 640 hours; for hand stripping, 160 hours; for machine stripping, 160 hours; for packing cigars retailing for more than six cents, 320 hours; and for packing cigars retailing for six cents or less, 160 hours: *Provided, however*, That a worker experienced in the packing of cigars retailing for six cents or less may be trained as a learner in packing cigars retailing for more than six cents for not more than 160 hours, and that a worker with 160 hours of more of experience in the packing of cigars retailing for more than six cents may not be retrained at subminimum wage rates for any period in packing cigars retailing for six cents or less.

(b) If a worker who is being trained
ı any machine occupation has been
nployed in that same occupation
ithin the previous three years, the
ours of such employment shall be de-
ıcted from the maximum learning
eriod. If a worker who is being
ained in any hand occupation has
een employed in that same occupa-
on within the previous five years, the
ours of such employment shall be de-
ıcted from the maximum learning
eriod for that occupation.

(c) No worker shall be employed as a
arner at special minimum rates in
ore than two of the learner occupa-
ons authorized by § 522.83.

0 FR 2308, Apr. 9, 1955, as amended at 23
R 3925, June 5, 1958; 26 FR 8285, Sept. 2,
61]

522.85 Special minimum wage rates.

(a) The special minimum wage rates
hich may be authorized in special
rtificates issued in the cigar industry
ıall be as follows:

(1) In the occupations of cigar ma-
ıine operating and cigar packing, not
s than $3.20 an hour through No-
mber 2, 1990; not less than $3.65 an
ur through March 31, 1991; and, not
s than $4.10 an hour thereafter.

2) In the occupations of hand roll-
g and hand bunch making, not less
an $3.20 an hour for the first 480
urs and $3.275 an hour for the
cond 480 hours through November 2,
90; at not less than $3.65 an hour for
e first 480 hours and $3.725 an hour
r the second 480 hours through
arch 31, 1991; and, at not less than
.10 an hour for the first 480 hours
d $4.175 an hour for the second 480
urs thereafter.

3) In the occupation of hand
ıking Italian Stogies, not less than
.20 an hour for the first 320 hours
d $3.275 an hour for the second 320
urs through November 2, 1990; not
s than $3.65 an hour for the first
) hours and $3.725 an hour for the
cond 320 hours through March 31,
)1; and, not less than $4.10 an hour
the first 320 hours and $4.175 and
ur for the second 320 hours thereaf-
.

4) In the occupations of hand strip-
ıg and machine stripping, not less
ın $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter.

(b) The earnings of learners employed on a piece rate basis shall be based on those piece rates if in excess of the authorized subminimum rates, in accordance with § 522.6(j).

[20 FR 2308, Apr. 9, 1955, as amended at 43 FR 5818, Feb. 10, 1978; 55 FR 46468, Nov. 2, 1990]

LUGGAGE, SMALL LEATHER GOODS AND LADIES' HANDBAG INDUSTRIES

§ 522.90 Applicability of general learner regulations.

The employment of learners pursuant to the provisions of §§ 522.90 to 522.93 shall be subject to all provisions of the general regulations governing the employment of learners (§§ 522.1 to 522.9), except to the extent to which any provision of such general regulations is inconsistent with any provision of §§ 522.90 to 522.93.

[22 FR 471, Jan. 24, 1957]

§ 522.91 Applicability of §§ 522.90 to 522.93.

For purposes of §§ 522.90 to 522.93, the luggage, small leather goods and ladies' handbag industries are defined as those industries manufacturing luggage, small leather goods and ladies' handbags.

[22 FR 471, Jan. 24, 1957]

§ 522.92 Issuance of learner certificates.

In the absence of extraordinary circumstances, applications for the employment of learners at wages lower than the statutory minimum wage in these industries shall be denied.

[32 FR 665, Jan. 20, 1967]

§ 522.93 Learner certificates in extraordinary circumstances.

In those cases where extraordinary circumstances are shown to exist, learner certificates for the employment of learners at wages lower than the statutory minimum wage shall be issued in accordance with the provisions of the general learner regulations (§§ 522.1 through 522.9) only after all interested parties have been given opportunity to present their views on the application pursuant to § 522.4.

[32 FR 665, Jan. 20, 1967]

SMALL ELECTRICAL PRODUCTS INDUSTRY

§ 522.100 Applicability of general regulations.

The employment of learners pursuant to the provisions of §§ 522.100 to 522.103 shall be subject to all provisions of the general regulations governing the employment of learners (§§ 522.1 to 522.9), except to the extent to which any provision of such general regulations is inconsistent with any provision of §§ 522.101 to 522.103.

[22 FR 3226, May 8, 1957]

§ 522.101 Applicability of §§ 522.100 to 522.103.

For purposes of §§ 522.100 to 522.103, the small electrical products industry is defined as the industry manufacturing such items as small switches, coils, relays, armatures, transformers, fuses, condensers, capacitors, radio speakers, and antennas.

[22 FR 3226, May 8, 1957]

§ 522.102 Issuance of learner certificates.

In the absence of exceptional circumstances applications for the employment of learners at wages lower than the statutory minimum wage in the small electrical products industry shall be denied.

[32 FR 665, Jan. 20, 1967]

§ 522.103 Learner certificates in exceptional circumstances.

In each case where a prima facie showing of exceptional circumstances is initially made to the Administrator, the applicant will be given an opportunity to demonstrate at a public hearing, by reliable, probative, and substantial evidence, that the denial of the applicant for a special learner certificate will curtail opportunities for employment and that the granting of such certificate will not give a competitive advantage to the applicant or tend to depress working standards for experienced workers in the industry. At the public hearing interested persons will have full opportunity to appear, testify, and conduct such cross-examination as may be required for a full and true disclosure of the facts. In each case in which exceptional circumstances are shown to exist under the standards provided in this section, a special certificate for the employment of learners at wages less than the statutory minimum wage shall be issued in accordance with the provisions of the general learner regulations (§§ 522.1 to 522.9).

[32 FR 665, Jan. 20, 1967]

MEN'S AND BOYS' CLOTHING INDUSTRY

§ 522.104 General denial policy.

All applications for the employment of learners at wages lower than the statutory minimum wage in the men's and boys' clothing industry shall be denied. For the purpose of this section, the men's and boys' clothing industry is defined as the industry which manufactures men's, youths', and boys' suits, coats, and overcoats.

[32 FR 666, Jan. 20, 1967]

OFFICE AND CLERICAL OCCUPATIONS IN ANY INDUSTRY

§ 522.105 General denial policy.

All applications for the employment of learners at wages lower than the statutory minimum wage in office and clerical occupations in any industry shall be denied.

[32 FR 666, Jan. 20, 1967]

PART 523—EMPLOYMENT OF MESSENGERS

Sec.
523.1 Application for messengers.
523.2 Applications by groups or individuals.
523.3 Consideration on basis of industry.
523.4 Information in applications.
523.5 Hearings.
523.6 Witnesses.
523.7 Burden of proof on applicants.
523.8 Further regulations for certificates.
523.9 Petition for review.
523.10 Petition for amendment of regulations.

AUTHORITY: Sec. 14, 52 Stat. 1068; 29 U.S.C. 214.

Source: 3 FR 2485, Oct. 15, 1938, unless otherwise noted.

§ 523.1 Application for messengers.

Application may be made to the Administrator of the Wage and Hour Division, Department of Labor, Washington, DC 20210, to employ messengers to be engaged primarily in delivering letters and messages at a wage lower than the minimum wage applicable under section 6 of the Fair Labor Standards Act of 1938 (52 Stat. 1062; 29 U.S.C. 206) whenever employment at such lower rate is necessary to prevent curtailment of employment opportunities.

[3 FR 2485, Oct. 15, 1938, as amended at 15 FR 603, Feb. 3, 1950]

§ 523.2 Applications by groups or individuals.

Such application may be filed by an employer or employee or group of employers or employees. Preferential considerations will be given, however, to applications filed by groups or organizations which are deemed to be representative of the interests of a whole industry or branch thereof.

§ 523.3 Consideration on basis of industry.

All applications filed under this part will be considered and acted upon on the basis of the needs of the employees and employers in the industry as a whole rather than on the basis of the needs of individual employees or employers in the industry.

§ 523.4 Information in applications.

The application shall:

(a) Identify the industry in which messengers, to be engaged primarily in delivering letters and messages, are requested to be employed at a wage lower than those applicable under section 6;

(b) Set forth the proposed hourly wage rate at which messengers will be compensated;

(c) State why messengers should be employed at a wage less than those applicable under section 6; and

(d) Include any other information believed to be pertinent.

[3 FR 2485, Oct. 15, 1938, as amended at 15 FR 603, Feb. 3, 1950]

§ 523.5 Hearings.

A hearing will be held before the Administrator or his authorized representative on such application at which all interested parties will be afforded an opportunity to present evidence and to be heard. A notice of the time, place, and scope of the hearing will be published in the Federal Register and made public by a general press release at least five days before the date of such hearing.

§ 523.6 Witnesses.

The Administrator shall issue a subpoena for attendance at such hearings to any party upon request and upon a showing of general relevance and reasonable scope of the evidence sought. The Administrator may, on his own motion, or that of his authorized representative, cause to be brought before him or his authorized representative any witness whose testimony he deems material to the matters in issue.

[11 FR 9555, Aug. 30, 1946]

§ 523.7 Burden of proof on applicants.

The applicant or applicants shall have the burden of showing at such hearing that the minimum wage applicable under section 6 will curtail employment opportunities for messengers in the industry designated in the application.

§ 523.8 Further regulations for certificates.

If upon the hearing the Administrator or his authorized representative determines that a lower wage rate than the rate applicable under section 6 is necessary to prevent curtailment of employment opportunities, the Administrator will issue rules and regulations providing for the employment of messengers in the industry under special certificates at such lower wage (subject to such limitations as to time, number, proportion and length of service) as the Administrator or his authorized representative has found to be necessary on the basis of the evidence presented at the hearing.

§ 523.9 Petition for review.

Any person aggrieved by the action of an authorized representative of the Administrator under this part may within fifteen days after the action of such representative file a petition with the Administrator requesting a review by the Administrator of the action of the representative. If the request for review is granted, all interested parties will be afforded an opportunity to be heard either in support or in opposition to the matters prayed for in the petition. A notice of the time and place and scope of the hearing will be published in the Federal Register and made public by general press release at least five days before the date of such hearing.

§ 523.10 Petition for amendment of regulations.

Any person wishing a revision of any of the terms of §§ 523.1 through 523.9 applicable to messengers may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, both in support and in opposition to the proposed changes.

PART 525—EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES

Sec.
525.1 Introduction.
525.2 Purpose and scope.
525.3 Definitions.
525.4 Patient workers.
525.5 Wage payments.
525.6 Compensable time.
525.7 Application for certificates.
525.8 Special provisions for temporary authority.
525.9 Criteria for employment of workers with disabilities under certificates at special minimum wage rates.
525.10 Prevailing wage rates.
525.11 Issuance of certificates.
525.12 Terms and conditions of special minimum wage certificates.
525.13 Renewal of special minimum wage certificates.
525.14 Posting of notices.
525.15 Industrial homework.
525.16 Records to be kept by employers.
525.17 Revocation of certificates.
525.18 Review.
525.19 Investigations and hearings.
525.20 Relation to other laws.
525.21 Lowering of wage rates.
525.22 Employee's right to petition.
525.23 Work activities centers.
525.24 Advisory Committee on Special Minimum Wages.

Authority: 52 Stat. 1060, as amended (29 U.S.C. 201-219); Pub. L. 99-486, 100 Stat. 1229 (29 U.S.C. 214).

Source: 54 FR 32928, Aug. 10, 1989, unless otherwise noted.

§ 525.1 Introduction.

The Fair Labor Standards Amendments of 1986 (Pub. L. 99-486, 100 Stat. 1229) substantially revised those provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201) (FLSA) permitting the employment of individuals disabled for the work to be performed (workers with disabilities) at special minimum wage rates below the rate that would otherwise be required by statute. These provisions are codified at section 14(c) of the FLSA and:

(a) Provide for the employment under certificates of individuals with disabilities at special minimum wage rates which are commensurate with those paid to workers not disabled for the work to be performed employed in the vicinity for essentially the same type, quality, and quantity of work;

(b) Require employers to provide written assurances that wage rates of individuals paid on an hourly rate basis be reviewed at least once every six months and that the wages of all employees be reviewed at least annually to reflect changes in the prevailing wages paid to experienced individuals not disabled for the work to be performed employed in the locality for essentially the same type of work;

(c) Prohibit employers from reducing the wage rates prescribed by certificate in effect on June 1, 1986, for two years;

compressing, and baling of hops when performed at the hop drying establishment during the hop drying period.

(4) *Mint oil distilling industry.* The distilling of mint oil from mint hay, including any operations necessary or incidental thereto.

(5) *Nursery stock storing and pack-ng industry.* The handling, packing, storing, and preparing of nursery stock, and any operations necessary or ncidental thereto.

(6) *Sugarcane processing and mill-ng industries*—(i) *Sugarcane process-ng and milling industry in Florida.* The activities comprising the industry are the following:

(*a*) The loading of sugarcane in the ields and its transportation to a sugarcane processing mill when per-ormed by employees of the processor; he unloading of sugarcane at the mill; nd the processing of sugarcane into aw sugar, syrup, and molasses;

(*b*) The following operations when erformed on the premises of a sugar-ane mill while the sugarcane is being rocessed: The immediate refining, as ne of a connected series of oper-tions, of raw sugar produced from ugarcane ground on the premises; the efining, by the introduction into such eries of operations, of raw sugar hich has been produced during the ame grinding season in other Florida ane processing plants of the employer, except in establishments where the efined sugar made from such trans-erred raw sugar constitutes one-half more of the refined sugar produced uring the cane processing season, or here purchased raw sugar, or raw ugar produced outside of Florida is efined during the cane processing ason; the burning, removing from e premises or dehydrating of ba-asse resulting from the processing of garcane;

(*c*) The handling, baling, bagging, acking, and storing of the sugar, rup, molasses, or bagasse;

(*d*) The repair of mechanical equip-ent used in loading and transporting garcane to the mill;

(*e*) Any operations necessary and in-dental to those described in para-aphs (b)(6)(i) (*a*), (*b*), (*c*), and (*d*) of is section, including the placing of ese products in st[illegible]e or transportation facilities on or near the premises; and

(*f*) Clerical, custodial, or other common activities in the harvesting and processing of sugarcane in Florida performed by employees of a processing establishment during the processing season as an incident to or in conjunction with the harvesting of the cane processed at such establishment in accordance with the customary practice of the enterprises of the sugarcane processing and milling industry in Florida.

(ii) *Sugarcane processing and milling industry in Puerto Rico.* In the Commonwealth of Puerto Rico, the transportation of sugarcane to a sugarcane processing mill when performed by employees of the processor; the unloading of sugarcane at the mill; the processing of sugarcane into raw sugar, syrup, and molasses; and the following operations when performed on the premises of a sugarcane mill while the sugarcane is being processed; the immediate refining, as one of a connected series of operations, of raw sugar produced from sugarcane ground on the premises; the refining, by the introduction into such series of operations, of raw sugar which has been produced during the same grinding season in other Puerto Rican can processing plants of the employer, except in establishments where the refined sugar made from such transferred raw sugar constitutes one-half or more of the refined sugar produced during the cane processing season, or where purchased raw sugar or raw sugar produced outside of Puerto Rico is refined during the cane season; the burning, removing from the premises, or dehydrating of bagasse resulting from the processing of sugarcane; the handling, baling, bagging, packing, and storing of the sugar, syrup, molasses, or bagasse; and any operations necessary and incident to the foregoing, including the placing of these products in storage or transportation facilities on or near the premises.

[34 FR 18548, Nov. 21, 1969, as amended at 35 FR 7727, May 20, 1970]

PART 527—EMPLOYMENT OF STUDENT WORKERS

Sec.
527.1 Applicability of the regulations contained in this part.
527.2 Definitions.
527.3 Application for a student-worker certificate.
527.4 Procedure for action upon an application.
527.5 Conditions governing issuance of a student-worker certificate.
527.6 Terms and conditions of employment under student-worker certificates.
527.7 Employment records to be kept.
527.8 Amendment or replacement of a student-worker certificate.
527.9 Amendment to the regulations in this part.

AUTHORITY: Sec. 14, 52 Stat. 1068, as amended; 29 U.S.C. 214.

SOURCE: 20 FR 7737, Oct. 14, 1955, unless otherwise noted.

§ 527.1 Applicability of the regulations contained in this part.

The regulations contained in this part are issued under section 14 of the Fair Labor Standards Act of 1938, as amended, to provide for the employment under special certificates of student-workers at wages lower than the minimum wage applicable under section 6 of the Act. Such certificates shall be subject to the terms and conditions hereinafter set forth.

§ 527.2 Definitions.

As used in the regulations contained in this part: A *student-worker* is a student who is receiving instruction in an educational institution and who is employed on a part-time basis in shops owned by the educational institution, for the purpose of enabling the student to defray part of his school expenses.

§ 527.3 Application for a student-worker certificate.

(a) Whenever the employment of student-workers as learners at wages lower than the minimum wage applicable under section 6 of the Fair Labor Standards Act of 1938, as amended, is believed necessary to prevent curtailment of opportunities for employment in a specified educational institution, [illegible] application for a special certificate authorizing the employment of such student-workers as learners at subminimum wage rates may be filed by an appropriate official of the educational institution with the Administrator of the Wage and Hour Division, United States Department of Labor, Washington, DC 20210. A copy of such application shall be filed simultaneously with the appropriate Regional Office of the Division.

(b) Application must be made on the official form furnished by the Division and must contain all information required by such form, including among other things, the industries and occupations within each industry in which the student-workers are to be employed as learners, the number of student-workers requested, their proposed hourly rates and learning periods in number of hours, the number of full-time experienced workers in such occupations and their straight-time average hourly earnings during the past year, and a description of the products being manufactured in the school-operated industry. Any applicant may also submit such additional information as may be pertinent.

(c) Any application which fails to present the information required by the forms may be returned to the applicant with a notation of deficiencies and without prejudice against submission of a new or revised application.

§ 527.4 Procedure for action upon an application.

(a) Upon receipt of an application for the employment of student workers as learners, the Administrator or his authorized representative shall issue or deny a special certificate. To the extent he deems appropriate, the Administrator or his authorized representative may provide an opportunity to other interested persons to present data and views on the application prior to granting or denying a student-worker certificate.

(b) If a student-worker certificate is issued, it shall be mailed to the educational institution. If a student-worker certificate is denied, notice of such denial shall be sent to the educational institution and such deni[illegible]all be without prejudice to the filing of any subsequent application.

(c) If a student-worker certificate is issued, there shall be published in the FEDERAL REGISTER a statement of the terms of such certificate.

[20 FR 7737, Oct. 14, 1955, as amended at 24 FR 204, Jan. 8, 1959]

§ 527.5 Conditions governing issuance of a student-worker certificate.

The following conditions shall govern the issuance of a special certificate authorizing the employment of student-workers as learners at subminimum wage rates:

(a) The employment of the student-workers at subminimum wages authorized by the special certificate must be necessary to prevent curtailment of opportunities for employment in a specified educational institution;

(b) The student-workers must be at least 16 years of age or at least 18 years of age if employed in any occupation declared to be particularly hazardous by order of the Secretary of Labor pursuant to the Fair Labor Standards Act of 1938, as amended;

(c) The occupation for which the student-workers are receiving training must require a sufficient degree of skill to necessitate an appreciable learning period;

(d) The issuance of a student-worker certificate will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry;

(e) There have been no serious outstanding violations of the provisions of a student-worker certificate previously issued to the educational institution, nor have there been any serious violations of the act which provide reasonable grounds to conclude that the terms of a student-worker certificate may not be complied with, if issued.

§ 527.6 Terms and conditions of employment under student-worker certificates.

(a) The student-worker certificate, if issued, shall specify, among other things: (1) The name and address of the educational institution employing the student-workers; (2) the particular industry and the occupations in which the student-workers are to be trained; (3) the number of student-workers authorized to be employed on any one day; (4) the subminimum wage rates permitted during the authorized learning period; (5) the learning period for each authorized learner occupation or group of occupations within each industry; and (6) the effective and expiration dates of the certificate.

(b) The subminimum wage rate shall be not less than 75 percent of the wage rate applicable under section 6 of the Fair Labor Standards Act of 1938, as amended, or the progressive wage schedule shall average not less than 75 percent of such applicable minimum over the authorized learning period.

(c) No student-worker certificate may be issued retroactively.

(d) A student-worker certificate may be issued for a period not to exceed the one school year, unless a longer period is found to be justified by extraordinary circumstances.

(e) No provision of a student-worker certificate shall excuse noncompliance higher standards applicable to student-workers employed as learners which may be established under any other Federal law, or any State law, or municipal ordinance.

§ 527.7 Employment records to be kept.

In addition to any other records required under the record keeping regulations part 516 of this chapter), the educational institution shall keep the following records specifically relating to student-workers employed as learners at subminimum wage rates.

(a) Each student-worker employed as a learner under a student-worker certificate shall be designated as such on the payroll records kept by the school, with each student-worker's occupation and rate of pay being shown.

(b) The records required in this section, including a copy of any special certificate issued, shall be kept and made available for inspection at all times for at least three years from the last effective date of the certificate.

§ 527.8 Amendment or replacement of a student-worker certificate.

The Administrator upon his own motion may amend the provisions of a student-worker certificate when it is necessary by reason of the amendment of the regulations in this part, or may withdraw a student-worker certificate and issue a replacement certificate when necessary to correct omissions or apparent defects in the original certificate.

§ 527.9 Amendment to the regulations in this part.

The Administrator may at any time upon his own motion or upon written request of any interested person setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations contained in this part.

PART 528—ANNULMENT OR WITHDRAWAL OF CERTIFICATES FOR THE EMPLOYMENT OF STUDENT-LEARNERS, APPRENTICES, LEARNERS, MESSENGERS, HANDICAPPED PERSONS, STUDENT-WORKERS, AND FULL-TIME STUDENTS IN AGRICULTURE OR IN RETAIL OR SERVICE ESTABLISHMENTS AT SPECIAL MINIMUM WAGE RATES

Sec.
528.1 Applicability of the regulations in this part.
528.2 Definition of terms.
528.3 Withdrawal and annulment of certificates.
528.4 According opportunity to demonstrate or achieve compliance.
528.5 Proceedings for withdrawal or annulment.
528.6 Review.
528.7 Effect of order of annulment or withdrawal.

AUTHORITY: Sec. 14, 52 Stat. 1068, as amended; 29 U.S.C. 214, unless otherwise noted.

§ 528.1 Applicability of the regulations in this part.

The regulations in this part shall govern the annulment or withdrawal of any certificate except a temporary certificate issued pending final action on an application, issued pursuant to parts 519, 520, 521, 522, 523, 524, and 527 of this chapter, and having effect under section 14 of the Fair Labor Standards Act of 1938.

[27 FR 3994, Apr. 26, 1962]

§ 528.2 Definition of terms.

As used in the regulations contained in this part, the term:

(a) *Withdrawal* shall mean termination of validity of a certificate with prospective effect from the time of the action of withdrawal.

(b) *Annulment* shall mean withdrawal of a certificate with retroactive effect to the date of issuance.

(c) *Authorized representative* shall mean: (1) The Assistant Regional Administrators for the Wage and Hour Division (who are authorized to redelegate this authority) within their respective regions, and (2) the Caribbean Director of the Wage and Hour Division for the area covered by the Caribbean office.

(d) *Area director* shall include any area director of the Wage and Hour Division.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913). Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

§ 528.3 Withdrawal and annulment of certificates.

(a) An authorized representative may withdraw a certificate from any employer within that representative's region who, acting under color of any certificate or application for the employment of learners, handicapped workers, student workers, student learners, apprentices, messengers, or full-time students in agriculture, retail, or service establishments, or in institutions of higher education at subminimum wages under section 14 of the act, fails to comply with the limitations in such certificate or otherwise violates the act.

(b) An authorized representative may annul a certificate affected by mistake in its issuance if the employer knowingly induced or knowingly took advantage of the mistake. Where the employer did not knowingly induce

tion 7(k) exemption may receive
npensatory time off in lieu of over-
ne pay for hours worked in excess of
maximum for their work period as
forth in § 553.230. The rules for
npensatory time off are set forth in
553.20 through 553.28 of this part.

b) Section 7(k) permits public agen-
s to balance the hours of work over
entire work period for law enforce-
nt and fire protection employees.
r example, if a firefighter's work
iod is 28 consecutive days, and he
she works 80 hours in each of the
it two weeks, but only 52 hours in
third week, and does not work in
fourth week, no overtime compen-
ion (in cash wages or compensatory
e) would be required since the total
irs worked do not exceed 212 for
work period. If the same firefight-
had a work period of only 14 days,
rtime compensation or compensa-
y time off would be due for 54
irs (160 minus 106 hours) in the
t 14 day work period.

3.232 Overtime pay requirements.

a public agency pays employees
ject to section 7(k) for overtime
irs worked in cash wages rather
n compensatory time off, such
es must be paid at one and one-
f times the employees' regular
s of pay. In addition, employees
have accrued the maximum 480
irs of compensatory time must be
d cash wages of time and one-half
ir regular rates of pay for overtime
irs in excess of the maximum for
work period set forth in § 553.230.

3.233 "Regular rate" defined.

he rules for computing an employ-
"regular rate", for purposes of the
's overtime pay requirements, are
forth in part 778 of this title.
se rules are applicable to employ-
for whom the section 7(k) exemp-
is claimed when overtime compen-
on is provided in cash wages. How-
, wherever the word "workweek"
sed in part 778, the words "work
od" should be substituted.

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

Subpart A—General

Sec.
570.1 Definitions.
570.2 Minimum age standards.

Subpart B—Certificates of Age

570.5 Authorized certificates and their effect.
570.6 Contents and disposition of certificate.
570.7 Documentary evidence required for issuance of certificate.
570.8 Federal certificates of age.
570.9 States in which State certificates are accepted.
570.10 Designation of the State of Alaska and the Territory of Guam.
570.11 Continued acceptability of certificates.
570.12 Revoked certificates.

PROVISIONS OF OTHER LAWS

570.25 Effect on other laws.

PROVISION FOR REVISION

570.27 Revision of this subpart.

Subpart C—Employment of Minors Between 14 and 16 Years of Age (Child Labor Reg. 3)

570.31 Determination.
570.32 Effect of this subpart.
570.33 Occupations.
570.34 Occupations in retail, food service, and gasoline service establishments.
570.35 Periods and conditions of employment.
570.35a Work experience and career exploration programs.
570.36 Certificates of age; effect.
570.37 Effect on other laws.
570.38 Revision of this subpart.

Subpart D—Procedure Governing Hazardous Occupation Determinations (Child Labor Reg. 5)

570.41 Administrative responsibility.
570.42 Reports of investigations.
570.43 Initiating proceedings.
570.44 Notice of proceedings.
570.45 Procedure governing oral participation.
570.46 Certification of the record.
570.47 Finding and order.
570.48 Special requests.
570.49 Amendments.

Subpart E—Occupations Particularly Hazardous for the Employment of Minors Between 16 and 18 Years of Age or Detrimental to Their Health or Well-Being

Sec.
570.50 General.
570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1).
570.52 Motor-vehicle driver and outside helper (Order 2).
570.53 Coal-mine occupations (Order 3).
570.54 Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill (Order 4).
570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5).
570.57 Exposure to radioactive substances and to ionizing radiations (Order 6).
570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7).
570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8).
570.60 Occupations in connection with mining, other than coal (Order 9).
570.61 Occupations involving slaughtering, meat packing or processing, or rendering (Order 10).
570.62 Occupations involved in the operation of bakery machines (Order 11).
570.63 Occupations involved in the operation of paper-products machines (Order 12).
570.64 Occupations involved in the manufacture of brick, tile, and kindred products (Order 13).
570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14).
570.66 Occupations involved in wrecking, demolition, and shipbreaking operations (Order 15).
570.67 Occupations in roofing operations (Order 16).
570.68 Occupations in excavation operations (Order 17).

Subpart E-1—Occupations in Agriculture Particularly Hazardous for the Employment of Children Below the Age of 16

570.70 Purpose and scope.
570.71 Occupations involved in agriculture.
570.72 Exemptions.

Subpart F—[Reserved]

Subpart G—General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended

GENERAL

Sec.
570.101 Introductory statement.
570.102 General scope of statutory provisions.
570.103 Comparison with wage and hour provisions.

COVERAGE OF SECTION 12(a)

570.104 General.
570.105 "Producer, manufacturer, or dealer".
570.106 "Ship or deliver for shipment in commerce".
570.107 "Goods".
570.108 "Produced".
570.109 "Establishment situated in the United States".
570.110 "In or about".
570.111 Removal "within 30 days".

COVERAGE OF SECTION 12(c)

570.112 General.
570.113 Employment "in commerce or in the production of goods for commerce".

JOINT AND SEPARATE APPLICABILITY OF SECTIONS 12(a) AND 12(c)

570.114 General.
570.115 Joint applicability.
570.116 Separate applicability.

OPPRESSIVE CHILD LABOR

570.117 General.
570.118 Sixteen-year minimum.
570.119 Fourteen-year minimum.
570.120 Eighteen-year minimum.
570.121 Age certificates.

EXEMPTIONS

570.122 General.
570.123 Agriculture.
570.124 Delivery of newspapers.
570.125 Actors and performers.
570.126 Parental exemption.

ENFORCEMENT

570.127 General.
570.128 Good faith defense.
570.129 Relation to other laws.

SOURCE: 16 FR 7008, July 20, 1951, unless otherwise noted. Redesignated at 28 FR 1634, Feb. 21, 1963. Re[illegible]ated and amended at 36 FR 25156, De[illegible]1971.

Subp[illegible]—General

Authority: Sec[illegible], 11, 12, 52 Stat. 1060, as amended, 1066, as amended, 1067, as amended; 29 U.S.C. 203, 211, 212.

Source: 41 FR 26834, June 29, 1976, unless otherwise noted.

§ 570.1 Definitions.

As used in this part:

(a) *Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201-219).

(b) *Oppressive child labor* means employment of a minor in an occupation for which he does not meet the minimum age standards of the Act, as set forth in § 570.2 of this subpart.

(c) *Oppressive child labor age* means an age below the minimum age established under the Act for the occupation in which a minor is employed or in which his employment is contemplated.

(d) A *certificate of age* means a certificate as provided in § 570.5(b) (1) or (2) of this part.

(e) [Reserved]

(f) *Secretary" or Secretary of Labor* means the Secretary of Labor, United States Department of Labor, or his authorized representative.

(g) *Wage and Hour Division* means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

(h) *Administrator* means the Administrator of the Wage and Hour Division or his authorized representative.

(i) *State agency* means any officer, executive department, board, bureau or commission of a State or any division or unit thereof authorized to take action with respect to the application of laws relating to minors.

§ 570.2 Minimum age standards.

(a) *All occupations except in agriculture.* (1) The Act, in section 3(1), sets a general 16-year minimum age which applies to all employment subject to its child labor provisions in any occupation other than in agriculture, with the following exceptions:

(i) The Act authorizes the Secretary of Labor to provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor, if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being (see subpart C of this part); and

(ii) The Act sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being (see subpart E of this part).

(2) The Act exempts from its minimum age requirements the employment by a parent of his own child, or by a person standing in place of a parent of a child in his custody, except in occupations to which the 18-year age minimum applies and in manufacturing and mining occupations.

(b) *Occupations in agriculture.* The Act sets a 16-year age minimum for employment in agriculture during school hours for the school district in which the employed minor is living at the time, and also for employment in any occupation in agriculture that the Secretary of Labor finds and declares to be particularly hazardous except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person (see Subpart E-1 of this part). There is a minimum age requirement of 14 years generally for employment in agriculture outside school hours for the school district where such employee is living while so employed. However, (1) a minor 12 or 13 years of age may be so employed with written consent of his parent or person standing in place of his parent, or may work on a farm where such parent or person is also employed, and (2) a minor under 12 years of age may be employed by his parent or by a person standing in place of his parent on a farm owned or operated by such parent or person, or may be employed with consent of such parent or person on a farm where all employees are exempt from the minimum wage provisions by virtue of section 13(a) (6) (A) of the Act.

Subpart B—Certificates of Age

Authority: Secs. 3, 11, 12, 52 Stat. 1060, as amended, 1066, as amended, 1067, as amended; 29 U.S.C. 203, 211, 212.

Source: 41 FR 26835, June 29, 1976, unless otherwise noted.

§ 570.5 Authorized certificates and their effect.

(a) To protect an employer from unwitting violation of the minimum age standards under the Act, section 3(1) of the Act provides that "oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age." The provisions of this subpart provide for age certificates based on the best available documentary evidence of age. Certificates issued and effective pursuant to this subpart furnish an employer with proof of the age of a minor employee upon which he may rely in determining whether the minor is at least the minimum age for the occupation in which he is to be employed.

(b) The employment of any minor shall not be deemed to constitute oppressive shild labor under the Act if his employer shall have on file an unexpired certificate, issued and held in accordance with this subpart, which shall be either:

(1) A Federal certificate of age, issued by a person authorized by the Administrator of the Wage and Hour Division, showing that such minor is above the oppressive child-labor age applicable to the occupation in which he is employed, or

(2) A State certificate, which may be in the form of and known as an age, employment, or working certificate or permit, issued by or under the supervision of a State agency in a State which has been designated for this purpose by the Administrator showing that such minor is above the oppressive child-labor age applicable to the occupation in which t[illegible]inor is employed. States so des[illegible]ted are listed in § 570.9(a). Any such certificate shall have the force and effect specified in § 570.9.

(c) The prospective employer of a minor, in order to protect himself from unwitting violation of the Act, should obtain a certificate (as specified in paragraphs (b) (1) and (2) of this section) for the minor if there is any reason to believe that the minor's age may be below the applicable minimum for the occupation in which he is to be employed. Such certificate should always be obtained where the minor claims to be only 1 or 2 years above the applicable minimum age for the occupation in which he is to be employed. It should also be obtained for every minor claiming to be older than 2 years above the applicable minimum age if his physical appearance indicates that this may not be true.

§ 570.6 Contents and disposition of certificate.

(a) Except as provided in §§ 570.9 and 570.10, a certificate of age which shall have the effect specified in § 570.5 shall contain the following information:

(1) Name and address of minor.

(2) Place and date of birth of minor, together with a statement indicating the evidence on which this is based. The place of birth need not appear on the certificate if it is obtained and kept on file by the person issuing the certificate.

(3) Sex of minor.

(4) Signature of minor.

(5) Name and address of minor's parent or person standing in place of parent. This information need not appear on the certificate if it is obtained and kept on file by the person issuing the certificate.

(6) Name and address of employer, if minor is under 18.

(7) Industry of employer, if minor is under 18.

(8) Occupation of minor, if minor is under 18.

(9) Signature of issuing officer.

(10) Date and place of issuance.

(b)(1) A certificate of age for a minor under 18 years of age shall be sent by a person authorized to issue such certificates to the prospective employer of the minor, who shall keep such certificate on file at the place of the minor's employment and who on the termination of the employment of the minor shall return the certificate to the person issuing it, except that a certificate issued for employment in agriculture may be given to the minor. A certificate returned to the issuing officer may be accepted as proof of age for the issuance of any subsequent certificate of age for that minor, without presentation of further proof of age, unless it is found that the proof of age originally submitted was in error.

(2) Whenever a certificate of age is issued for a minor 18 or 19 years of age it may be given to the minor by the person issuing the certificate. Every minor 18 or 19 years of age shall, upon entering employment, deliver his certificate of age to his employer for filing and upon the termination of the employment, the employer shall return the certificate to the minor.

(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1215-0009)

[41 FR 26835, June 29, 1976, as amended at 49 FR 18294, Apr. 30, 1984]

§ 570.7 Documentary evidence required for issuance of certificate.

(a) Except as otherwise provided in §§ 570.9 and 570.10, a certificate of age which shall have the effect specified in § 570.5 shall be issued only upon application of the minor desiring employment or of the prospective employer to the person authorized to issue such certificate and only after acceptable documentary evidence of age has been received, examined, and approved. Such evidence shall consist of one of the following to be required in the order of preference herein designated:

(1) A birth certificate or attested transcript thereof or a signed statement of the recorded date and place of birth, issued by a registrar of vital statistics or other officer charged with the duty of reco[illegible] births.

(2) A record of baptism or attested transcript thereof showing the date and place of birth and date and place of baptism of the minor, or a bona fide contemporary record of the date and place of the minor's birth kept in the Bible in which the records of the births in the family of the minor are preserved, or other documentary evidence satisfactory to the Administrator, such as a passport showing the age of the minor, or a certificate of arrival in the United States issued by the United States immigration office and showing the age of the minor, or a life-insurance policy: *Provided*, That such other documentary evidence has been in existence at least 1 year prior to the time it is offered as evidence: And *provided further*, That a school record of age or an affidavit of a parent or a person standing in place of a parent, or other written statement of age shall not be accepted except as specified in paragraph (a) (3) of this section;

(3) The school record or the school-census record of the age of the minor, together with the sworn statement of a parent or person standing in place of a parent as to the age of the minor and also a certificate signed by a physician specifying what in his opinion is the physical age of the minor. Such certificate shall show the height and weight of the minor and other facts concerning his physical development which were revealed by such examination and upon which the opinion of the physician as to the physical age of the minor is based. If the school or school-census record of age is not obtainable, the sworn statement of the parent or person standing in place of a parent as to the date of birth of the minor, together with a physician's certificate of age as hereinbefore specified, may be accepted as evidence of age.

(b) The officer issuing a certificate of age for a minor shall require the evidence of age specified in paragraph (a)(1) of this section in preference to that specified in paragraphs (a)(2) and (3) of this section, and shall not accept the evidence of age permitted by either subsequent paragraph unless he shall receive and file evidence that reasonable efforts have been made to

obtain the preferred evidence required by the preceding paragraph or paragraphs before accepting any subsequently named evidence: *Provided*, That to avoid undue delay in the issuance of certificates, evidence specified in paragraph (a)(2) of this section may be accepted, or if such evidence is not available, evidence specified in paragraph (a)(3) of this section may be accepted if a verification of birth has been requested but has not been received from the appropriate bureau of vital statistics.

§ 570.8 Federal certificates of age.

A Federal certificate of age which shall have the effect specified in § 570.5 shall be issued by a person authorized by the Administrator of the Wage and Hour Division and shall be issued in accordance with the provisions of §§ 570.6 and 570.7.

§ 570.9 States in which State certificates are accepted.

(a) The States in which age, employment, or working certificates or permits have been found by the Administrator to be issued by or under the supervision of a State agency substantially in accordance with the provisions of §§ 570.6 and 570.7 and which are designated as States in which certificates so issued shall have the force and effect specified in § 570.5, except as individual certificates may be revoked in accordance with § 570.11 of this subpart, are:

Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

(b) State certificates requiring conditions or restrictions additional to those required by this subpart shall not be deemed to be inconsistent herewith.

(c) The designation of a State under this section shall have force and effect indefinitely unless withdrawal of such designation is deemed desirable for the effective administration of the Act. No withdrawal of the designation of a State under this section shall make any certificate invalid if it was issued by or under the supervision of a State agency as herein provided prior to such withdrawal.

§ 570.10 Designation of the State of Alaska and the Territory of Guam.

The State of Alaska and the Territory of Guam are designated as States in which any of the following documents shall have the same effect as Federal certificates of age as specified in § 570.5:

(a) A birth certificate or attested transcript thereof, or a signed statement of the recorded date and place of birth issued by a registrar of vital statistics or other officer charged with the duty of recording births, or

(b) A record of baptism or attested transcript thereof showing the date of birth of the minor, or

(c) With respect to the State of Alaska, a statement on the census records of the Bureau of Indian Affairs and signed by an administrative representative thereof showing the name, date of birth, and place of birth of the minor.

§ 570.11 Continued acceptability of certificates.

(a) Whenever a person duly authorized to make investigations under this Act shall obtain substantial evidence that the age of the minor as given on a certificate held by an employer subject to this Act is incorrect, he shall inform the employer and the minor of such evidence and of his intention to request through the appropriate channels that action be taken to establish the correct age of the minor and to determine the continued acceptability of the certificate as proof of age under the Act. The said authorized person shall request in writing through the appropriate channels that action be taken on the acceptability of the certificate as proof of age under the Fair Labor Standards Act and shall state the evidence of age of the minor which he has obtained and the reasons for such request. A copy of this request shall be sent to the Administrator of the Wage and Hour Division for further handling through the State agency responsible for the issuance of certificates, except that in those States where Federal certificates of age are issued, action necessary to establish the correct age of the minor and to revoke the certificate if it is found that the minor is under age shall be taken by the Administrator of the Wage and Hour Division or his designated representative.

(b) The Administrator shall have final authority in those States in which State certificates are accepted as proof of age under the Act for determining the continued acceptability of the certificate, and shall have final authority for such determination in those States in which Federal certificates of age are issued. When such determination has been made in any case, notice thereof shall be given to the employer and the minor. In those cases involving the continued acceptability of State certificates, the appropriate State agency and the official who issued the certificate shall also be notified.

§ 570.12 Revoked certificates.

A certificate which has been revoked as proof of age under the Act shall be of no force and effect under the Act after notice of such revocation.

PROVISIONS OF OTHER LAWS

§ 570.25 Effect on other laws.

No provision of this subpart shall under any circumstances justify or be construed to permit noncompliance with the provisions of any other Federal law or of any State law or municipal ordinance establishing higher standards than those established under this subpart.

PROVISION FOR REVISION

§ 570.27 Revision of this subpart.

Any person wishing a revision of any of the provisions of this subpart may submit in writing to the Secretary of Labor a petition setting forth the changes desired and the reasons for proposing them. If, after consideration of the petition, the Secretary believes that reasonable cause for amendment of the regulation is set forth, he shall make other provision for affording interested parties an opportunity to present their views, both in support of and in opposition to the proposed changes.

Subpart C—Employment of Minors Between 14 and 16 Years of Age (Child Labor Reg. 3)

AUTHORITY: Sec. 3, 52 Stat. 1060, as amended; 29 U.S.C. 203.

§ 570.31 Determination.

The employment of minors between 14 and 16 years of age in the occupations, for the periods, and under the conditions hereafter specified does not interfere with their schooling or with their health and well-being and shall not be deemed to be oppressive child labor.

§ 570.32 Effect of this subpart.

In all occupations covered by this subpart the employment (including suffering or permitting to work) by an employer of minor employees between 14 and 16 years of age for the periods and under the conditions specified in § 570.35 shall not be deemed to be oppressive child labor within the meaning of the Fair Labor Standards Act of 1938.

§ 570.33 Occupations.

This subpart shall apply to all occupations other than the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations which the Secretary of Labor may, pursuant to section 3(1) of the Fair Labor Standards Act and Reorganization Plan No. 2, issued pursuant to the Reorganization Act of 1945, find and declare to be hazardous

for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being;

(f) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(2) Warehousing and storage;

(3) Communications and public utilities;

(4) Construction (including demolition and repair);

except such office (including ticket office) work, or sales work, in connection with paragraphs (f)(1), (2), (3), and (4) of this section, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

§ 570.34 Occupations in retail, food service, and gasoline service establishments.

(a) This subpart shall apply to the following permitted occupations for minors between the ages of 14 and 16 employed by retail, food service, and gasoline service establishments.

(1) Office and clerical work, including the operation of office machines;

(2) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;

(3) Price marking and tagging by hand or by machine, assembling orders, packing and shelving;

(4) Bagging and carrying out customers' orders;

(5) Errand and delivery work by foot, bicycle, and public transportation;

(6) Clean up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers, or cutters;

(7) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as but not limited to, dish-washers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders;

(8) Work in connection with cars and trucks if confined to the following: Dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing; and other occupations permitted by this section, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.

(9) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from those where the work described in paragraph (b)(7) of this section is performed;

(b) Paragraph (a) of this section shall not be construed to permit the application of this subpart to any of the following occupations in retail, food service, and gasoline service establishments:

(1) All occupations listed in § 570.33 except occupations involving processing, operation of machines and work in rooms where processing and manufacturing take place which are permitted by paragraph (a) of this section;

(2) Work performed in or about boiler or engine rooms;

(3) Work in connection with maintenance or repair of the establishment, machines or equipment;

(4) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes;

(5) Cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking;

(6) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, and cutters, and bakery-type mixers;

(7) Work in freezers and meat coolers and all work in the preparation of meats for sale except as described in paragraph (a)(9) of this section;

(8) Loading and unloading goods to and from trucks, railroad cars, or conveyors;

(9) All occupations in warehouses except office and clerical work.

[27 FR 4165, May 2, 1962. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

Appendix P: Employment of Workers with Disabilities Under Special Certificates-Part 525

Appendix P: Employment of Workers with Disabilities Under Special Certificates -Part 525

APPENDIX P

Employment of Workers with Disabilities Under Special Certificates
FINAL RULE

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

Federal Register August 10, 1989

U.S. DEPARTMENT OF LABOR
FINAL REGULATIONS

PART 525--Employment of Workers with Disabilities Under Special Certificates

525.1 INTRODUCTION

The Fair Labor Standards Amendments of 1986 (Pub. L. 99-486, 100 Stat. 1229) substantially revised those provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201) (FLSA) permitting the employment of individuals disabled for the work to be performed (workers with disabilities) at special minimum wage rates below the rate that would otherwise be required by statute. These provisions are codified at section 14(c) of the FLSA and:

(a) Provide for the employment under certificates of individuals with disabilities at special minimum wage rates which are commensurate with those paid to workers not disabled for the work to be performed employed in the vicinity for essentially the same type, quality, and quantity of work;

(b) Require employers to provide written assurances that wage rates of individuals paid on an hourly rate basis be reviewed at least annually to reflect changes in the prevailing wages paid to experienced individuals not disabled for the work to be performed employed in the locality for essentially the same type of work;

(c) Prohibit employers from reducing the wage rates prescribed by certificate in effect on June 1, 1986, for two years;

(d) Permit the continuance or establishment of work activities centers; and

(e) Provide that any employee receiving a special minimum wage rate pursuant to section 14(c), or the parent or guardian of such an employee, may petition for a review of that wage rate by an administrative law judge.

§525.2 Purpose and scope.

The regulations in this part govern the issuance of all certificates authorizing the employment of workers with disabilities at special minimum wages pursuant to section 14(c) of FLSA.

§525.3 Definitions.

(a) "FLSA" means the Fair Labor Standards Act of 1938, as amended.

(b) "Secretary" means the Secretary of Labor or the Secretary of Labor's authorized representative.

(c) "Administrator" means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or the Administrator's authorized representative.

(d) "Worker with a disability" for the purpose of this Part means an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. The following, taken by themselves, are not considered disabilities for the purposes of this part: Vocational, social, cultural, or educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and, correctional parole or probation. Further, a disability which may affect earning or productive capacity for one type of work may not affect such capacity for another.

(e) "Patient worker" means a worker with a disability, as defined above, employed by a hospital or institution providing residential care where such worker receives treatment or care without regard to whether such worker is a resident of the establishment.

(f) "Hospital or institution," hereafter referred to as "institution," is a public or private, nonprofit or for-profit facility primarily engaged in (i.e., more than 50 percent of the income is attributable to) providing residential care for the sick, the aged, or the mentally ill or retarded, including but not limited to nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, residential centers for drug addicts or alcoholics, and the like, whether licensed or not licensed.

(g) "Employ" is defined in FLSA as "to suffer or permit to work." An employment relationship arises whenever an individual, including an individual with a disability, is suffered or permitted to work. The determination of an employment relationship does not depend upon the level of performance or whether the work is of some therapeutic benefit. However, an individual does not become an employee if engaged in such activities as making craft products where the individual voluntarily participates in such activities and the products become the property of the individual making them, or all of the funds resulting from the sale of the products are divided among the participants in the activity or are used in purchasing additional materials to make craft products.

(h) "Special minimum wage" is a wage authorized under a certificate issued to an employer under this part that is less than the statutory minimum wage.

487

(i) "Commensurate" wage is a special minimum wage paid to a worker with a disability which is based on the worker's individual productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, and quantity of work in the vicinity in which the individual under certificate is employed. For example, the commensurate wage of a worker with a disability who is 75% as productive as the average experienced nondisabled worker, taking into consideration the type, quality, and quantity of work of the disabled worker, would be set at 75% of the wage paid to the nondisabled worker. For purposes of these regulations, a commensurate wage is always a special minimum wage, i.e., a wage below the statutory minimum.

(j) "Vicinity" or "locality" means the geographic area from which the labor force of the community is drawn.

(k) "Experienced worker" means a worker who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period. Typically, such a worker will have received at least one pay raise after successful completion of the probationary or training period.

§525.4 Patient workers.

With respect to patient workers, as defined in §525.3(e), a major factor in determining if an employment relationship exists is whether the work performed is of any consequential economic benefit to the institution. Generally, work shall be considered to be of consequential economic benefit if it is of the type that workers without disabilities normally perform, in whole or in part in the institution or elsewhere. However, a patient does not become an employee if he or she merely performs personal housekeeping chores, such as maintaining his or her own quarters, or receives a token remuneration in connection with such services. It may also be possible for patients in family-like settings such as group homes to rotate or share household tasks or chores without becoming employees.

§525.5 Wage payments.

(a) An individual whose earning or productive capacity is not impaired for the work being performed cannot be employed under a certificate issued pursuant to this part and must be paid at least the applicable minimum wage. An individual whose earning or productive capacity is impaired to the extent that the individual is unable to earn at least the applicable minimum wage may be paid a commensurate wage, but only after the employer has obtained a certificate authorizing payment of special minimum wages from the appropriate office of the Wage and Hour Division of the Department of Labor.

(b) With respect to patient workers employed in institutions, no deductions can be made from such individuals' commensurate wages to cover the cost of room, board, or other services provided by the facility. Such an individual must receive his or her wages free and clear, except for amounts deducted for taxes assessed against the employee and any voluntary wage assignments directed by the employee. (See Part 531 of this title.) However, it is not the intention of these regulations to preclude the institution thereafter from assessing or collecting charges for room, board, and other services actually provided to an individual to the extent permitted by applicable Federal or State law and on the same basis as it assesses and collects from nonworking patients.

§525.6 Compensable time.

Individuals employed subject to this part must be compensated for all hours worked. Compensable time includes not only those hours during which the individual is actually performing productive work but also includes those hours when no work is performed but the individual is required by the employer to remain available for the next assignment. However, where the individual is completely relieved from duty and is not required to remain available for the next assignment, such time will not be considered compensable time. For example, an individual employed by a rehabilitation facility would not be engaged in a compensable activity where such individual is completely relieved from duty but is provided therapy or the opportunity to participate in an alternative program or activity in the facility not involving work and not directly related to the worker's job (e.g., self-help skills training, recreation, job seeking skills training, independent living skills, or adult basic education). The burden of establishing that such hours are not compensable rests with the facility and such hours must be clearly distinguishable from compensable hours. (For further information on compensable time in general under FLSA, see Part 785 of this title.)

§525.7 Applications for certificates.

(a) Application for a certificate may be filed by any employer with the Regional Office of the Wage and Hour Division having administrative jurisdiction over the geographic area in which the employment is to take place.

(b) The employer shall provide answers to all of the applicable questions contained on the application form provided by the Regional Office.

(c) The application shall be signed by the employer or the employer's authorized representative.

§525.8 Special provisions for temporary authority.

(a) Temporary authority may be granted to an employer permitting the employment of workers with disabilities pursuant to a vocational rehabilitation program of the Veterans Administration for veterans with a service-incurred disability or a vocational rehabilitation program administered by a State agency.

(b) Temporary authority is effective for 90 days from the date the appropriate section of the application form is signed and completed by the duly designated representative of the State agency or the Veterans Administration. Such authority may not be renewed or extended by the issuing agency.

(c) The signed application constitutes the temporary authority to employ workers with disabilities at special minimum wage rates. A copy of the application must be forwarded within 10 days to the appropriate Regional Office of the Wage and Hour Division. Upon receipt, the application will be reviewed and, where appropriate, a certificate will be issued by the Regional Office. Where additional information is required or certification is denied, the applicant will receive notification from the Regional Office.

§525.9 Criteria for employment of workers with disabilities under certificates at special minium wage rates.

(a) In order to determine that special minimum wage rates are necessary in order to prevent the curtailment of opportunities for employment, the following criteria will be considered:

(1) The nature and extent of the disabilities of the individuals employed as these disabilities relate to the individuals' productivity;

(2) The prevailing wages of experienced

employees not disabled for the job who are employed in the vicinity in industry engaged in work comparable to that performed at the special minimum wage rate;

(3) The productivity of the workers with disabilities compared to the norm established for nondisabled workers through the use of a verifiable work measurement method (see §525.12[h]) or the productivity of experienced nondisabled workers employed in the vicinity on comparable work; and,

(4) The wage rates to be paid to the workers with disabilities for work comparable to that performed by experienced nondisabled workers.

(b) In order to be granted a certificate authorizing the employment of workers with disabilities at special minimum wage rates, the employer must provide the following written assurances concerning such employment:

(1) In the case of individuals paid hourly rates, the special minimum wage rates will be reviewed by the employer at periodic intervals at a minimum of once every six months; and,

(2) Wages for all employees will be adjusted by the employer at periodic intervals at a minimum of once each year to reflect changes in the prevailing wages paid to experienced nondisabled individuals employed in the locality for essentially the same type of work.

§525.10 Prevailing wage rates.

(a) A prevailing wage rate is a wage rate that is paid to an experienced worker not disabled for the work to be performed. The Department recognizes that there may be more than one wage rate for a specific type of work in a given area. An employer must be able to demonstrate that the rate being used as prevailing for determining a commensurate wage was objectively determined according to the guidelines contained in this section.

(b) An employer whose work force primarily consists of nondisabled workers or who employs more than a token number of nondisabled workers doing similar work may use as the prevailing wage thee wage rate paid to that employer's experienced nondisabled employees performing similar work. Where an agency places a worker or workers with disabilities on the premises of an employer described above, the wage paid to the employer's experienced workers may be used as prevailing.

(c) An employer whose work force primarily consists of workers disabled for the work to be performed may be determine the prevailing wage by ascertaining the wage rates paid to the experienced nondisabled workers of other employers in the vicinity. Such data may be obtained by surveying comparable firms in the area that employ primarily nondisabled workers doing similar work. The firms surveyed must be representative of comparable firms in terms of wages paid to experienced workers doing similar work. The appropriate size of such a sample will depend on the number of firms doing similar work but should include no less than three firms unless there are fewer firms doing such work in the area. A comparable firm is one which is of similar size in terms of employees or which competes for or bids on contracts of a similar size or nature. Employers may contact other sources such as the Bureau of Labor Statistics or private or State employment services where surveys are not practical. If similar work cannot be found in the area defined by the geographic labor market, the closest comparable community may be used.

(d) The prevailing wage rate must be based upon the wage rate paid to experienced nondisabled workers as defined elsewhere in these regulations. Employment services which only provide entry level wage data are not acceptable as sources for prevailing wage information as required in these regulations.

(e) There is no prescribed method for tabulating the results of a prevailing wage survey. For example, either a weighted or unweighted average would be acceptable provided the employer is consistent in the methodology used.

(f) The prevailing wage must be based upon work utilizing similar methods and equipment. Where the employer is unable to obtain the prevailing wage for a specific job to be performed on the premises, such as collating documents, it would be acceptable to use as the prevailing wage the wage paid to experienced individuals employed in similar jobs such as file clerk or general office clerk, requiring the same general skill levels.

(g) The following information should be recorded in documenting the determination of prevailing wage rates:

(1) Date of contact with firm or other source;

(2) Name, address, and phone number of firm or other source contacted;

(3) Individual contacted within firm or source;

(4) Title of individual contacted;

(5) Wage rate information provided;

(6) Brief description of work for which wage information is provided;

(7) Basis for the conclusion that wage rate is not based upon an entry level position. (See also §525.10[c].)

(h) A prevailing wage may not be less than the minimum wage specified in section 6(a) of FLSA.

§525.11 Issuance of certificates.

(a) Upon consideration of the criteria cited in these regulations, a special certificate may be issued.'

(b) If a special minimum wage certificate is issued, a copy shall be sent to the employer. If denied, the employer will be notified in writing and told the reasons for the denial, as well as the right to petition under §525.18.

§525.12 Terms and conditions of special minimum wage certificates.

(a) A special minimum wage certificate shall specify the terms and conditions under which it is granted.

(b) A special minimum wage certificate shall apply to all workers employed by the employer to which the special certificate is granted provided such workers are in fact disabled for the work they are to perform.

(c) A special minimum wage certificate shall be effective for a period to be designated by the Administrator. Workers with disabilities may be paid wages lower than the statutory minimum wage rate set forth in section 6 of FLSA only during the effective period of the certificate.

(d) Workers paid under special minimum wage certificates shall be paid wages commensurate with those paid experienced nondisabled workers employed in the vicinity in which they are employed for essentially the same type, quality, and quantity of work.

(e) Workers with disabilities shall be paid not less than one and one-half times their regular rates of pay for all hours worked in excess of the maximum workweek applicable under section 7 of FLSA.

(f) The wages of all workers paid a special minimum wage under this part shall be adjusted by the employer at periodic intervals at a minimum of once a year to reflect changes in the prevailing wages paid to experienced individuals not disabled for the work to be performed employed in the vicinity for essentially the same type of work.

493

(g) Each worker with a disability and, where appropriate, a parent or guardian of the worker, shall be informed, orally and in writing, of the terms of the certificate under which such worker is employed. This requirement may be satisfied by making copies of the certificate available. Where a worker with disabilities displays an understanding of the terms of a certificate and requests that other parties not be informed, it is not necessary to inform a parent or guardian.

(h) In establishing piece rates for workers with disabilities, the following criteria shall be used:

(1) Industrial work measurement methods such as stop watch time studies, predetermined time systems, standard data, or other measurement methods (hereinafter referred to as "work measurement methods") shall be used by the employer to establish standard production rates of workers not disabled for the work to be performed. The Department will accept the use of whatever method an employer chooses to use. However, the employer has the responsibility of demonstrating that a particular method is generally accepted by industrial engineers and has been properly executed. No specific training or certification will be required. Where work measurement methods have already been applied by another employer or source, and documentation exists to show that the methods used are the same, it is not necessary to repeat these methods to establish production standards.

(i) The piece rates shall be based on the standard production rates (number of units an experienced worker not disabled for the work is expected to produce per hour) and the prevailing industry wage rate paid experienced nondisabled workers in the vicinity for essentially the same type and quality of work or for work requiring similar skill. (Prevailing industry wage rate divided by the standard number of units per hour equals the piece rate.).

(ii) Piece rates shall not be less than the prevailing piece rates paid experienced workers not disabled for the work doing the same or similar work in the vicinity when such piece rates exist and can be compared with the actual employment situations of the workers with disabilities.

(2) Any work measurement method used to establish piece rates shall be verifiable through the use of established industrial work measurement techniques.

(i) If stop watch time studies are made, they shall be made with a person or persons whose productivity represents normal or near normal performance. If their productivity does not represent normal or near normal performance, adjustments of performance shall be made. Such adjustments, sometimes called "performance rating" or "leveling" shall be made only by a person knowledgeable in this technique, as evidenced by successful completion of training in this area. The persons observed should be given time to practice the work to be performed in order to provide them with an opportunity to overcome the initial learning curve. The persons observed shall be trained to use the specific work method and tools which are available to workers with disabilities employed under special minimum wage certificates.

(ii) Appropriate time shall be allowed for personal time, fatigue, and unavoidable delays. Generally, not less than 15% allowances (9-10 minutes per hour) shall be used in conducting time studies.

(iii) Work measurements shall be conducted using the same work method that will be utilized by the workers with disabilities. When modifications such as jigs or fixtures are made to production methods to accommodate special needs of individual workers with disabilities, additional work measurements need not be conducted where the modifications enable the workers with disabilities to perform the work or increase productivity but would impede a worker without disabilities. Where workers with disabilities. Where workers with disabilities do not have a method available to them, as for example where an adequate number of machines are not available, a second work measurement should be conducted.

(i) Each worker with a disability employed on a piece rate basis should be paid full earnings. Employers may "pool" earnings only where piece rates cannot be established for each individual worker. An example of this situation is a team production operation where each worker's individual contribution to the finished product cannot be determined separately. However, in such situations, the employer should make every effort to objectively divide the earnings according to the produtivity level of each individual worker.

(j) The following terms shall be met for workers with disabilities employed at hourly rates:

(1) Hourly rates shall be based upon the prevailing hourly wage rates paid to experienced workers not disabled for the job doing essentially the same type of work and using similar methods or equipment in the vicinity. (See also §525.10.)

(2) An initial evaluation of a worker's productivity shall be made within the first month after employment begins in order to determine the worker's commensurate wage rate. The results of the evaluation shall be recorded and the worker's wages shall be adjusted accordingly no later than the first complete pay period following the initial evaluation. Each worker is entitled to commensurate wages for all hours worked. Where the wages paid to the worker during pay periods prior to the initial evaluation were less than the commensurate wage indicated by the evaluation, the employer must compensate the worker for any such difference unless it can be demonstrated that the initial payments reflected the commensurate wage due at that time.

(3) Upon completion of not more than six months of employment, a review shall be made with respect to the quantity and quality of work of each hourly-rated worker with a disability as compared to that of non-disabled workers engaged in similar work or work requiring similar skills and the findings shall be recorded. The worker's productivity shall then be reviewed and the findings recorded at least every 6 months thereafter. A review and recording of productivity shall also be made after a worker changes jobs and at least every 6 months thereafter. The worker's wages shall be adjusted accordingly no later than the first complete pay period following each review. Conducting reviews at six-month intervals should be viewed as a minimum requirement since workers with disabilities are entitled to commensurate wages for all hours worked. Reviews must be conducted in a manner and and frequency to insure payment of commensurate wages. For example, evaluations should not be conducted before a worker has had an opportunity to become familiar with the job or at a time when the worker is fatigued or subject to conditions that result in less than normal productivity.

(4) Each review should contain, as a minimum and in addition to the data cited above, the following: name of the individual being reviewed; date and time of the review; and, name and position of the individual

doing the review.

§525.13 Renewal of special minimum wage certificates

(a) Applications may be filed for renewal of special minimum wage certificates.

(b) If an application for renewal has been properly and timely filed, an existing special minimum wage certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Workers with disabilities may not continue to be paid special minimum wages after notice that an application for renewal has been denied.

(d) Except in cases of willfulness or those in which the public interest requires otherwise, before an application for renewal is denied facts or conduct which may warrant such action shall be called to the attention of the employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.

§525.14 Posting of notices.

Every employer having workers who are employed under special minimum wage certificates shall at all time display and make available to employees a poster as prescribed and supplied by the Administrator. The Administrator will make available, upon request, posters in other formats such as Braille or recorded tapes. Such a poster will explain, in general terms, the conditions under which special minimum wages may be paid and shall be posted in a conspicuous place on the employer's premises where it may be readily observed by the workers with disabilities, the parents and guardians of such workers, and other workers. Where an employer finds it inappropriate to post such a notice, this requirement nay be satisfied by providing the poster directly to all employees subject to its terms.

§525.15 Industrial homework.

(a) Where the employer is an organization or institution carrying out a recognized program of rehabilitation for workers with disabilities and holds a special certificate issued pursuant to this part, certification under regulations governing the employment of industrial homeworkers (29 CFR Part 530) is not required.

(b) For all other types of employers, special rules apply to the employment of homeworkers in the following industries: Jewelry manufacturing, knitted outerwear, gloves and mittens, buttons and buckles, handkerchief manufacturing, embroideries, and women's apparel. (See 29 CFR Part 530.)

§525.16 Records to be kept by employers.

Every employer, or where appropriate (in the case of records verifying the workers' disabilities) the referring agency or facility, of workers employed under special minimum wage certificates shall maintain and have available for inspection records indicating:

(a) Verification of the workers' disabilities;

(b) Evidence of the productivity of each worker with a disability gathered on a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates);

(c) The prevailing wages paid workers not disabled for the job performed who are employed in industry in the vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate (see also §525.10[b]) and [d]);

(d) The production standards and supporting documentation for nondisabled workers for each job being performed by workers with disabilities employed under special certificates; and

(e) The records required under all of the applicable provisions of Part 516 of this title, except that any provision pertaining to homeworker handbooks shall not be applicable to workers with disabilities who are employed by a recognized nonprofit rehabilitation facility and working in or about a home, apartment, tenement, or room in a residential establishment. (See §525.15) Records required by this section shall be maintained and preserved for the periods specified in Part 516 of this title. (Approved by the Office of Management and Budget under control number 1215-0017)

§525.17 Revocation of certificates.

(a) A special minimum wage certificate may be revoked for cause at any time. A certificate may be revoked:

(1) As of the date of issuance, if it is found that misrepresentations or false statements have been made in obtaining the certificate or in permitting a worker with a disability to be employed thereunder;

(2) As of the date of violation, if it is found that any of the provisions of FLSA or of the terms of the certificate have been violated; or

(3) As of the date of notice of revocation, if it is found that the certificate is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of these regulations other than those referred to in (a)(2) above have not been complied with.

(b) Except in cases of willfulness or those in which the public interest requires otherwise, before any certificate shall be revoked, facts or conduct which may warrant such action shall be called to the attention of the employer in writing and such employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.

§525.18 Review.

Any person aggrieved by any action of the Administrator taken pursuant to this part may, within 60 days or such additional time as the Administrator may allow, file with the Administrator a petition for review. Such review, if granted, shall be made by the Administrator. Other interested persons, to the extent it is deemed appropriate, may be afforded an opportunity to present data and views.

§525.19 Investigations and hearings.

The Administrator may conduct an investigation, which may include a hearing, prior to taking any action pursuant to these regulations. To the extent it is deemed appropriate, the Administrator may provide an opportunity to other interested persons to present data and views. Proceedings initiated pursuant to this section are separate from those taken pursuant to FLSA section 14(c)(5) and §525.22.

§525.20 Relations to other laws.

No provision of these regulations, or of any special minimum wage certificate issued thereunder, shall excuse noncompliance with any other Federal or State law or municipal ordinance establishing higher standards.

§525.21 Lowering of wage rates.

(a) No employer may reduce the minimum hourly wage rate, guaranteed by a special minimum wage certificate in effect on June 1, 1986, of any worker with disabilities from June 1, 1986 until May 31, 1988, without prior authorization of the Secretary.

(b) This provision applies to those workers with disabilities who were:

(1) Employed during the pay period which included June 1, 1986, even if no work was performed during that pay period; and

(2) Employed under a group or individual special minimum wage certificate which specified a minimum guaranteed rate, i.e., a special certificate issued under former section 14(c)(1) or (2)(b) of FLSA.

(c) In order to obtain authority to lower the wage rate of a worker with a disability to whom this provision applies to a rate below the certificate rate, the employer must submit information as prescribed under this section to the appropriate Regional Office. The burden of establishing the necessity of lowering the wage of a worker with a disability rests with the employer.

(d) In reviewing a request to lower a wage rate of a worker with a disability, documented evidence of the following will be considered:

(1) Any change in the worker's disabling condition which has a substantially negative impact on productive capacity;

(2) Any change in the type of work being performed in the facility which would affect the productivity of the worker with a disability or which would result in the application of a lower prevailing wage rate;

(3) Any change in general economic conditions in the locality in which the work is performed which results in lower prevailing wage rates.

(e) A wage rate may not be lowered until authorization is obtained.

§525.22 Employee's right to petition.

(a) Any employee receiving a special minimum wage at a rage specified pursuant to subsection 14(c) of FLSA or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. No particular form of petition is required, except that a petition must be signed by the individual, or the parent or guardian of the individual, and should contain the name and address of the employee and the name and address of the employee's employer. A petition may be filed in person or by mail with the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S3502, 200 Constitution Avenue NW., Washington, DC 20210. The petitioner may be represented by counsel in any stage of such proceedings. Upon receipt, the petition shall be forwarded immediately to the Chief Administrative Law Judge.

(b) Upon receipt of a petition, the Chief Administrative Law Judge shall, within 10 days of the receipt of the petition by the Secretary, appoint an Administrative Law Judge (ALJ) to hear the case. Upon receipt, the ALJ shall notify the employer named in the petition. The ALJ shall also notify the employee, the employer, the Administrator, and the Associate Solicitor for Fair Labor Standards of the time and place of the hearing. The date of the hearing shall be not more than 30 days after the assignment of the case to the ALJ. All the parties shall be given at least eight days' notice of such hearing. Because of the time constraints imposed by the statute, requests for postponement shall be granted only sparingly and for compelling reasons.

(c) Hearings held under this subpart shall be conducted, consistent with statutory time limitations, under the Department's rules of practice and procedure for administrative hearings found in 29 CFR Part 18. There shall be a minimum of formality in the proceeding consistent with orderly procedure. Any employer who intends to participate in the proceeding shall provide to the ALJ, and shall serve on the petitioner and the Associate Solicitor for Fair Labor Standards no later than 15 days prior to the commencement of the hearing, or as soon as practical depending on when the notice of a hearing as required under paragraph (b) was received, that documentary evidence pertaining to the employee or employees identified in the petition which is contained in the records required by §525.16 (a), (b), (c) and (d). the Administrator shall be permitted to participate by counsel in the proceeding upon application.

(d) In determining whether any special minimum wage rate is justified, the ALJ shall consider, to the extent evidence is available, the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured, and the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity and the conditions under which such productivity was measured. In these proceedings, the burden of proof on all matters relating to the propriety of a wage at issue shall rest with the employer.

(e) The ALJ shall issue a decision within 30 days after the termination of the hearing and shall serve the decision on the Administrator and all interested parties by Express

Mail or other similar system guaranteeing one-day delivery. The decision shall contain appropriate findings and conclusions and an order. If the ALJ finds that the special minimum wage being paid or which has been paid is not justified, the order shall specify the lawful rate and the period of employment to which the rate is applicable. In the absence of evidence sufficient to support the conclusion that the proper wage should be less than the minimum wage, the ALJ shall order that the minimum wage be paid.

(f) Within 15 days after the date of the decision of the ALJ, the petitioner, the Administrator, or the employer who seeks review thereof may request review by the Secretary. No particular form of request is required, except that a request must be in writing and must attach a copy of the ALJ's decision. requests for review shall be filed with the Secretary of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Any other interested party may file a reply thereto with the Secretary and the Administrator within 5 working days of receipt of such request for review. The request for review and reply thereto shall be transmitted by the Administrator to all interested parties by Express Mail or other similar system guaranteeing one-day delivery.

(g) The decision of the ALJ shall be deemed to be final agency action 30 days after issuance thereof, unless within 30 days of the date of the decision the Secretary grants a request to review the decision. Where such request for review is granted, within 30 days after receipt of such request the Secretary shall review the record and shall either adopt the decision of the ALJ or issue exceptions. The decision of the ALJ, together with any exceptions issued by the Secretary, shall be deemed to be a final agency action.

(h) Within 30 days of issuance of the final action of the Secretary reviewing the decision of the ALJ or declining to grant such review, any person adversely affected or aggrieved by such action may seek judicial review pursuant to Chapter 7 of Title 5, United States Code. The record of the case, including the record of proceedings before the ALJ, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§525.23 Work activities centers.

Nothing in these regulations shall be interpreted to prevent an employer from maintaining or establishing work activities centers to provide therapeutic activities for workers with disabilities as long as the employer complies with the requirement of these regulations. Work activities centers shall include centers planned and designed to provide therapeutic activities for workers with severe disabilities affecting their productive capacity. Any establishment whose workers with disabilities are employed at special minimum wages must comply with the requirements of this part, regardless of the designation of such establishment.

§525.24 Advisory Committee on Special Minimum Wages.

The Advisory Committee on Special Minimum Wages, the members of which are appointed by the Secretary, shall advise and make recommendations to the Administrator concerning the administration and enforcement of these regulations and the need for amendments thereof and shall serve such other functions as may be desired by the Administrator.

503